

<p style="text-align: center;">17</p> <p>1 some photographs. To the best of my recollection, 2 that's what it contained. 3 Q Notices of violation? 4 A I don't recall if there was a notice of 5 violation in the original complaint provided to me. 6 Q What did you do, if anything, in response to 7 the complaint that Danis Bechter had sent to you in May? 8 A I believe I contacted the city of Poway to 9 get more information about it. 10 Q To whom did you speak? 11 A Danis Bechter. 12 Q And when you contacted him, was that via 13 e-mail or orally? 14 A I don't recall how the first contact came. 15 Q What was your purpose for contacting him? 16 A Just to assess, get some information about 17 what was happening out there. 18 Q What did he tell you? 19 A He told me that Dr. Moritz had been grading 20 on his property. He had been issued stop work orders. 21 I believe we discussed a sketch or a water color 22 painting that Dr. Moritz had provided regarding how -- 23 his vision of what he wanted his property to look like. 24 Q Did you discuss Danis Bechter's -- whether 25 Danis Bechter had a belief that Bill Moritz was</p>	<p style="text-align: center;">19</p> <p>1 Q Did you guys have any discussions about what 2 you believed, you or Danis believed were Bill Moritz's 3 skill levels as far as the environmental code provisions 4 are concerned? 5 A We may have, but I don't recall exact 6 conversations. 7 Q Have you ever seen a situation where, in 8 response to a request from a governmental agency for a 9 restoration plan, that somebody submitted a water color 10 painting? 11 A Water color paintings, no. 12 Q So this was fairly unusual? 13 A Yes. 14 Q I'm going to show you what I will mark as 15 Exhibit 52. And we're starting at 52 because we've had 16 a couple of other depositions. And this one, 17 unfortunately, I don't have a separate copy of at this 18 point. So we're going to have to share. 19 Is Exhibit 52 the water color painting that 20 you discussed with Danis Bechter that you've just 21 testified about? 22 A Yes. 23 (Exhibit 52 marked) 24 BY MR. SIMPSON: 25 Q Is it your understanding that that was Bill</p>
<p style="text-align: center;">18</p> <p>1 unsophisticated? 2 MR. LEON: Excuse me. I'll object. It's 3 vague and ambiguous and could lead to a huge 4 misunderstanding about what that term means. 5 THE WITNESS: I don't recall. 6 BY MR. SIMPSON: 7 Q Tell me about the water color sketch. What 8 did he say about that? 9 A He said that they had requested Dr. Moritz to 10 restore the stream and provide a plan showing how he 11 would do that, and they were provided with this water 12 color sketch, and that, in Danis's estimation, it was 13 inadequate. 14 Q Did Danis suggest to you that he believed 15 that because when Danis asked Bill Moritz for a plan and 16 Bill Moritz gave him a water color picture, that 17 demonstrated that Bill Moritz was unsophisticated as far 18 as environmental requirements are concerned? 19 A I don't recall him portraying it that way, 20 no. 21 Q Did you guys have any conversation at all 22 about what you guys perceived was Bill Moritz's skill 23 level as far as environmental code provisions are 24 concerned? 25 A Could you repeat the question, please?</p>	<p style="text-align: center;">20</p> <p>1 Moritz's plan as far as response to the city of Poway? 2 A Yes. 3 Q Was that something that you learned about at 4 the outset of your involvement? 5 A Yes. 6 Q And that was May of 2008? 7 A Yes. 8 Q What was the next thing that you did with 9 respect to this case? 10 A Due to the fact that there were already stop 11 work orders in place, I didn't do anything except try to 12 keep tabs on it from initially, because I thought that 13 the stop work orders would have put a halt to anything 14 that was going to impact the stream, and that perhaps 15 from that point we would be able to address the 16 situation. 17 Q What is the next date, if you know, that you 18 were -- that you did anything with respect to this case? 19 A I read e-mails after the initial complaint 20 was given to us from Danis Bechter stating that work had 21 continued, and that eventually over Memorial Day weekend 22 the stream had been completely filled in and a pipe had 23 been installed across the property. I believe in 24 between that time I also asked for copies of whatever 25 stop work orders, any documentation that the city of</p>

<p style="text-align: center;">21</p> <p>1 Poway had provided Dr. Moritz.</p> <p>2 Q Do you believe that the RWQCB has the</p> <p>3 authority to enforce city of Poway grading ordinances?</p> <p>4 MR. LEON: Calls for legal speculation.</p> <p>5 THE WITNESS: No, I don't know.</p> <p>6 BY MR. SIMPSON:</p> <p>7 Q You're an enforcement officer for Regional</p> <p>8 Water Quality Control Board to enforce the power of the</p> <p>9 regional board, right?</p> <p>10 A Correct.</p> <p>11 Q Have you ever enforced grading ordinances for</p> <p>12 any city within the San Diego region?</p> <p>13 A No.</p> <p>14 Q Have you ever seen the Regional Water Quality</p> <p>15 Control Board or heard of the Regional Water Quality</p> <p>16 Control Board having done that?</p> <p>17 A Only in the purview of perhaps the municipal</p> <p>18 storm water permits requiring that to comply with those</p> <p>19 permits the cities have adequate ordinances to comply</p> <p>20 with that municipal storm water permit.</p> <p>21 Q And the municipal storm water permit you're</p> <p>22 talking about is currently 2007 hyphen 0001?</p> <p>23 A Yes.</p> <p>24 Q And that's the order by which the regional</p> <p>25 board has cities become co-permittees of a permit to</p>	<p style="text-align: center;">23</p> <p>1 need to comply with it, yes.</p> <p>2 Q But what does the municipal permit require of</p> <p>3 cities such as the city of Poway, generally speaking?</p> <p>4 A Generally speaking, it requires them to</p> <p>5 implement a program to address storm water pollution by</p> <p>6 the implementation of BMPs, enforcement of their</p> <p>7 municipal codes, and having the legal authority to</p> <p>8 enforce their own code and comply with the permit.</p> <p>9 Q And, among other things, that requires of the</p> <p>10 city to have grading ordinances in place that require</p> <p>11 people performing grading on property to have erosion</p> <p>12 control plans, correct?</p> <p>13 A Yes.</p> <p>14 Q And it also requires that the city to</p> <p>15 periodically address the condition of culverts within</p> <p>16 the city of Poway, right?</p> <p>17 A I'm not sure what you mean by that.</p> <p>18 Q What is a culvert?</p> <p>19 A A culvert is a crossing of a stream or a</p> <p>20 structure that allows water to pass through it.</p> <p>21 Q And that basically conveys storm water from</p> <p>22 one side of a road, for example, to another?</p> <p>23 A It can convey water of any kind from one side</p> <p>24 to the other.</p> <p>25 Q And if it's plugged, then the road that the</p>
<p style="text-align: center;">22</p> <p>1 plan for storm water management?</p> <p>2 A Yes.</p> <p>3 Q And that's the authority under which cities</p> <p>4 have to prepare items such as jurisdictional urban</p> <p>5 runoff management plans terms?</p> <p>6 A Yes.</p> <p>7 Q Do you know whether the city of Poway has a</p> <p>8 JURMP pertaining to the area in which my client's home</p> <p>9 sits?</p> <p>10 A I know that the city of Poway had a JURMP</p> <p>11 that incorporates the entire city within their</p> <p>12 jurisdiction.</p> <p>13 Q Do you know whether that covers the culverts</p> <p>14 and drainage swales along Crocker Road next to the</p> <p>15 Rattlesnake Creek tributary that's upgradient of my</p> <p>16 client's property?</p> <p>17 A I would assume so.</p> <p>18 Q And that's because it's with the jurisdiction</p> <p>19 of the city of Poway?</p> <p>20 A Correct.</p> <p>21 Q So it's your understanding as an enforcement</p> <p>22 officer for the regional board that the city of Poway</p> <p>23 must manage storm water upgradient of my client's</p> <p>24 property?</p> <p>25 A As it pertains to the municipal permit, they</p>	<p style="text-align: center;">24</p> <p>1 culvert would otherwise allow the water to pass beneath</p> <p>2 becomes a dam, correct?</p> <p>3 A Potentially.</p> <p>4 Q Do you know whether there is a program or</p> <p>5 there's a requirement of the storm water permits for</p> <p>6 cities such as the city of Poway to periodically clean</p> <p>7 its culverts?</p> <p>8 A I'm not sure if the municipal storm water</p> <p>9 permit requires that or not.</p> <p>10 Q Do you know if there's any other requirement</p> <p>11 of the city of Poway to do that cleaning out of culverts</p> <p>12 upgradient of my client's property under the authority</p> <p>13 of any code provision or regulation of any type?</p> <p>14 A I'm not sure.</p> <p>15 Q What is the next thing you did with respect</p> <p>16 to the Moritz property?</p> <p>17 A The next thing I did was inspect the site on</p> <p>18 June 9th, 2008 in anticipation of attending a meeting</p> <p>19 with Dr. Moritz's representative and the city of Poway</p> <p>20 at the city of Poway building, City Hall.</p> <p>21 Q Did you have any conversation with Bill</p> <p>22 Moritz before June 9, 2008?</p> <p>23 A No.</p> <p>24 Q Did you have any communication with him via</p> <p>25 e-mail or any other means before June 9, 2008?</p>

<p style="text-align: center;">25</p> <p>1 A No.</p> <p>2 Q How about Lori Moritz? Did you have any</p> <p>3 conversation or communication with Lori Moritz before</p> <p>4 June 9, 2008?</p> <p>5 A No.</p> <p>6 Q Now, at the time Bill Moritz -- I'll try to</p> <p>7 put this properly -- was being assisted by a fellow</p> <p>8 named Stuart Sandrock. Are you aware of that name?</p> <p>9 A Yes.</p> <p>10 Q And had you had any communication with Stuart</p> <p>11 Sandrock before June 9, 2008?</p> <p>12 A No.</p> <p>13 Q How about anybody with the Moritz's interests</p> <p>14 in mind before June 9, 2008? Had you had any</p> <p>15 communications with them before that time?</p> <p>16 A No.</p> <p>17 Q How did you get to the property on June 9,</p> <p>18 2008?</p> <p>19 A Danis Bechter drove us, by us, I mean me and</p> <p>20 Kelly Fisher of the California Department of Fish and</p> <p>21 Game, drove us to Crocker Road.</p> <p>22 Q And then where did you go?</p> <p>23 A We parked on Crocker Road, and then we went</p> <p>24 to the adjacent property of Sean Marsden.</p> <p>25 Q On June 9, 2008, did you set foot on my</p>	<p style="text-align: center;">27</p> <p>1 Q What else did he say?</p> <p>2 A He was concerned about his 90-year-old</p> <p>3 mother, who was recovering from a broken neck, and who</p> <p>4 liked to take walks around the property. And he was</p> <p>5 concerned that the pipe that Dr. Moritz had installed</p> <p>6 didn't connect the dots with the stream and was</p> <p>7 basically to the -- I believe it would be west of where</p> <p>8 the stream used to go, and he was concerned that</p> <p>9 discharge from that pipe could potentially -- his mother</p> <p>10 could slip and re-injure herself.</p> <p>11 Q Did he say how his mother was injured?</p> <p>12 A A broken neck.</p> <p>13 Q Did he say how her neck got broken?</p> <p>14 A No.</p> <p>15 Q Did he describe at all what had been done on</p> <p>16 the Moritz property?</p> <p>17 A Yes.</p> <p>18 Q What did he say?</p> <p>19 A He mentioned that -- he talked about the</p> <p>20 importation of dirt onto the site by truckload.</p> <p>21 Q Did he say how much dirt was imported?</p> <p>22 A He couldn't give us an accurate estimation,</p> <p>23 but he said it was many, many truckloads.</p> <p>24 Q Did he say that he saw the truckloads dump</p> <p>25 their loads?</p>
<p style="text-align: center;">26</p> <p>1 client's property?</p> <p>2 A No.</p> <p>3 Q When is the first time that you did that?</p> <p>4 A The first time I set foot on your client's</p> <p>5 property was for the inspection in which you invited me</p> <p>6 to attend.</p> <p>7 Q August 29th?</p> <p>8 A Yes, that sounds right.</p> <p>9 Q Did you have an inspection warrant when you</p> <p>10 went out to my client's property on June 9, 2008?</p> <p>11 A No.</p> <p>12 Q Did Danis Bechter?</p> <p>13 A I don't know.</p> <p>14 Q Did Kelly Fisher?</p> <p>15 A I don't know.</p> <p>16 Q You guys went onto Sean Marsden's property?</p> <p>17 A Yes.</p> <p>18 Q And he's the property owner to the south?</p> <p>19 A To the south.</p> <p>20 Q Did you speak with Sean Marsden that day?</p> <p>21 A Yes.</p> <p>22 Q What did he say?</p> <p>23 A I don't recall the conversation completely,</p> <p>24 but the gist of it was that he was upset at the</p> <p>25 activities that had occurred on Dr. Moritz's property.</p>	<p style="text-align: center;">28</p> <p>1 A I don't recall.</p> <p>2 Q Did he say that some of those dump trucks</p> <p>3 went onto the property to the north of my client's</p> <p>4 property?</p> <p>5 A I don't remember him saying that, no.</p> <p>6 Q Did he deny it?</p> <p>7 A I don't think trucks to the client's property</p> <p>8 north of Dr. Moritz came up in our conversation.</p> <p>9 Q Did you observe the property to the north of</p> <p>10 my client's property on June 9, 2008?</p> <p>11 A No. Well, I saw it. I didn't pay particular</p> <p>12 attention to it.</p> <p>13 Q On June 9, 2008, did you have an</p> <p>14 understanding where the property line divided between</p> <p>15 the north property and my client's property?</p> <p>16 A I assumed it was the access road that is in</p> <p>17 between them, somewhere around there.</p> <p>18 Q And you're referring to an access road that</p> <p>19 was an east/west access road on the northern edge of the</p> <p>20 property?</p> <p>21 A Yes.</p> <p>22 Q Did Sean Marsden say whether any of the soil</p> <p>23 that was on the Moritz property had migrated onto the</p> <p>24 Marsden property to the south?</p> <p>25 A I don't recall him saying that.</p>

<p style="text-align: center;">29</p> <p>1 Q Did he say he was concerned about that</p> <p>2 occurring at some point in the future?</p> <p>3 A I don't recall.</p> <p>4 Q From the standpoint of the RWQCB, were you as</p> <p>5 an enforcement officer concerned about what you observed</p> <p>6 on the Moritz property as of June 9, 2008?</p> <p>7 A Yes.</p> <p>8 Q What concerns did you have?</p> <p>9 A I had concerns that the pipe had been placed</p> <p>10 improperly and that it could potentially cause erosion</p> <p>11 onto Mr. Marsden's property. I had concerns that a</p> <p>12 stream had been filled in without the proper permits. I</p> <p>13 had concerns that this project had been conducted</p> <p>14 potentially by someone who is not a civil engineer, and</p> <p>15 I had concerns that the soil that had been imported onto</p> <p>16 the site was not properly compacted and that there was</p> <p>17 no erosion and sediment controls to prevent the movement</p> <p>18 of sediment onto Mr. Marsden's property should a</p> <p>19 significant rain event occur.</p> <p>20 Q As of June 9, did you have any other</p> <p>21 concerns?</p> <p>22 A I can't think of any other concerns I had at</p> <p>23 that point.</p> <p>24 Q Can you discuss for me, if you would, your</p> <p>25 educational background?</p>	<p style="text-align: center;">31</p> <p>1 for the United States Census as a data input operator</p> <p>2 for the census, 2000 census.</p> <p>3 Q And then you got a job here?</p> <p>4 A I interviewed with the regional board and got</p> <p>5 a job here.</p> <p>6 Q What was discussed at the June 9, 2008</p> <p>7 meeting that you've testified about earlier?</p> <p>8 MR. LEON: Vague and ambiguous. Discussed</p> <p>9 among who?</p> <p>10 BY MR. SIMPSON:</p> <p>11 Q You can answer if you understand.</p> <p>12 A We discussed the situation and our</p> <p>13 expectations of what was necessary to remedy the</p> <p>14 situation.</p> <p>15 Q What did Mr. Sandrock say?</p> <p>16 A He discussed personality conflicts with city</p> <p>17 of Poway staff, that he was there to try and work</p> <p>18 towards some sort of resolution to this situation, that</p> <p>19 he wanted to get facts and bring -- he basically said he</p> <p>20 wanted to bring everyone together and try to come to</p> <p>21 some sort of resolution to this.</p> <p>22 Q Did he say where the personality conflicts</p> <p>23 were? Between who?</p> <p>24 A I believe it was with Don Sharp, an inspector</p> <p>25 for the city of Poway.</p>
<p style="text-align: center;">30</p> <p>1 A From where would you like me to start?</p> <p>2 Q Sometime after high school. How about that.</p> <p>3 A Okay. I received a bachelor of science in</p> <p>4 environmental science from Sonoma State University, with</p> <p>5 a concentration in water quality. As part of my</p> <p>6 bachelor of science program, I was required to do an</p> <p>7 internship prior to graduation, and I interned at the</p> <p>8 North Coast Regional Water Quality Control Board for a</p> <p>9 period of approximately a year. And a bachelor of</p> <p>10 science is the highest level of education I've received.</p> <p>11 Q What jobs did you have before coming to the</p> <p>12 San Diego Regional Water Quality Control Board?</p> <p>13 A Quite a few.</p> <p>14 Q What jobs did you have after college and</p> <p>15 before --</p> <p>16 A After college and before coming -- I'm sorry.</p> <p>17 I'm sorry.</p> <p>18 Q I'm having a hard time finishing my questions</p> <p>19 because sometimes I'm not fully, well, caffeinated. I</p> <p>20 don't know.</p> <p>21 In any event, before coming to RWQCB and</p> <p>22 after college, what jobs did you have?</p> <p>23 A After graduation, I moved with my wife here</p> <p>24 to San Diego. And while awaiting an interview with the</p> <p>25 San Diego Regional Water Quality Control Board, I worked</p>	<p style="text-align: center;">32</p> <p>1 Q Don, D-o-n?</p> <p>2 A Yes.</p> <p>3 Q Between Don Sharp and who?</p> <p>4 A And Dr. Moritz.</p> <p>5 Q What did he say about that?</p> <p>6 A I don't recall the exact conversations, but</p> <p>7 basically that there was a personality conflict between</p> <p>8 Dr. Moritz and Don Sharp.</p> <p>9 Q What was the next thing that you did with</p> <p>10 respect to this matter?</p> <p>11 A I -- at the meeting, I informed Mr. Sandrock</p> <p>12 that the regional board was contemplating issuing a</p> <p>13 cleanup and abatement order, and I tried to give him a</p> <p>14 little background on that, and tell him what the cleanup</p> <p>15 and abatement order was and what it would most likely</p> <p>16 require.</p> <p>17 Q Did you explain to him the extent of the</p> <p>18 cleanup and abatement order that you were contemplating</p> <p>19 at that point?</p> <p>20 A I explained to him that the cleanup and</p> <p>21 abatement order would require his client to remove the</p> <p>22 pipe and restore the creek to its pre-impact conditions.</p> <p>23 Q Why was it that you were contemplating a</p> <p>24 cleanup and abatement order as of June 9, 2008?</p> <p>25 A Because that's generally the appropriate</p>

<p style="text-align: center;">33</p> <p>1 enforcement action to take in a case like this.</p> <p>2 Q When you say "a case like this," what do you</p> <p>3 mean?</p> <p>4 A An illegal filling of a waters of the state.</p> <p>5 Q When you say waters of the state, what do you</p> <p>6 mean by that?</p> <p>7 A I mean any ground or surface or saline waters</p> <p>8 contained within the State of California.</p> <p>9 Q Is it your understanding that any ground</p> <p>10 that's filled in is within the jurisdiction of the</p> <p>11 regional board here in San Diego?</p> <p>12 A What do you mean by "any ground"?</p> <p>13 Q Well, as I understood what your last answer</p> <p>14 was, that you believed -- well, strike that. Let's go</p> <p>15 back to your last answer.</p> <p>16 (Record read)</p> <p>17 BY MR. SIMPSON:</p> <p>18 Q Is it your understanding that waters of the</p> <p>19 state means ground or ground water?</p> <p>20 A Ground water.</p> <p>21 Q So when you're talking about waters of the</p> <p>22 state, your understanding of that term is ground water,</p> <p>23 surface water or saline water?</p> <p>24 A Correct.</p> <p>25 Q The Moritz property, when you observed it</p>	<p style="text-align: center;">35</p> <p>1 Q In the rainy season, April 2005?</p> <p>2 A I don't recall the exact date that she was</p> <p>3 there in 2005. I was subsequently provided photos from</p> <p>4 her visit in 2005.</p> <p>5 Q And you saw water in one of those photos?</p> <p>6 A Yes.</p> <p>7 Q She provided you with three photos?</p> <p>8 A I don't recall how many. One photo. One</p> <p>9 photo.</p> <p>10 Q And that was a close-up showing water in the</p> <p>11 gully?</p> <p>12 A It was a photograph taken on the northern</p> <p>13 property looking south towards Dr. Moritz's property,</p> <p>14 which showed an ephemeral stream -- it showed a stream</p> <p>15 with water flowing in it.</p> <p>16 Q I'm going to show you what I'll mark as</p> <p>17 Exhibit 53. And that is indicated on there -- well, is</p> <p>18 this the photo that Kelly Fisher provided you?</p> <p>19 A Yes.</p> <p>20 (Exhibit 53 marked)</p> <p>21 BY MR. SIMPSON:</p> <p>22 Q Is it your understanding that this was taken</p> <p>23 on April 11, 2005?</p> <p>24 A Yes.</p> <p>25 Q And is that your handwriting beneath the</p>
<p style="text-align: center;">34</p> <p>1 before June 9, had you ever seen any water in there?</p> <p>2 A I hadn't observed the property prior to</p> <p>3 June 9.</p> <p>4 Q On June 9, was there any water in there?</p> <p>5 A On June 9, at the meeting, we looked over</p> <p>6 topographic maps that the Department of Fish and Game</p> <p>7 had, and we discussed the fact that Kelly Fisher had</p> <p>8 been out there in 2005 and what she had observed, and</p> <p>9 her observation that there were in fact waters of the</p> <p>10 state on the property north and on Dr. Moritz's</p> <p>11 property.</p> <p>12 Q On June 9, did you observe any water on the</p> <p>13 Moritz property?</p> <p>14 A No.</p> <p>15 Q Have you ever personally observed water on</p> <p>16 the Moritz property?</p> <p>17 A Personally?</p> <p>18 Q Yes.</p> <p>19 A No.</p> <p>20 Q The information about water having been on</p> <p>21 the Moritz property came from a discussion that you had</p> <p>22 with Kelly Fisher, right?</p> <p>23 A Yes.</p> <p>24 Q And that was from her visit in 2005, right?</p> <p>25 A Correct.</p>	<p style="text-align: center;">36</p> <p>1 photograph?</p> <p>2 A Yes.</p> <p>3 Q Any understanding where the property line is</p> <p>4 between my client's property and the property to the</p> <p>5 north?</p> <p>6 A I would assume it would be that fence, but</p> <p>7 I -- I don't know for sure.</p> <p>8 Q Is it your understanding that that's an</p> <p>9 access road that's within the two fences that are shown</p> <p>10 in the upper portion of the photograph?</p> <p>11 A It would seem so, yes.</p> <p>12 Q Do you have an understanding as to whether</p> <p>13 this is my client's property shown in the background of</p> <p>14 this photograph?</p> <p>15 A Only by the fact that that is what Kelly</p> <p>16 Fisher told me, and that is what the caption of the</p> <p>17 photo she provided me says.</p> <p>18 Q You don't have any firsthand knowledge of</p> <p>19 what's depicted in this photograph, right?</p> <p>20 A I don't understand.</p> <p>21 Q You weren't there when this photo was taken?</p> <p>22 A No, I was not.</p> <p>23 Q You don't know for sure that this is my</p> <p>24 client's property, right?</p> <p>25 A No. I can only assume that Kelly Fisher was</p>

<p style="text-align: center;">37</p> <p>1 telling me the truth.</p> <p>2 Q So you're relying on her telling you the</p> <p>3 truth as far as this being the Moritz property?</p> <p>4 A Yes.</p> <p>5 Q Do you have any understanding as to how much</p> <p>6 water must fall in order for the ephemeral stream that</p> <p>7 crosses my client's property to flow?</p> <p>8 A No.</p> <p>9 Q Any idea what my client's property looked</p> <p>10 like in 2007?</p> <p>11 A No.</p> <p>12 Q Any idea what my client's property looked</p> <p>13 like after the Witch Creek fires and after winter rains</p> <p>14 but before my client did any work on his property in</p> <p>15 February of 2008?</p> <p>16 A Only pictures I saw on sharekids.com of the</p> <p>17 2007 fires, which didn't really provide photos that I</p> <p>18 could see that showed the creek.</p> <p>19 Q When did you first observe those photographs?</p> <p>20 A I don't remember the first time I looked at</p> <p>21 sharekids.com, but I know that -- I believe it was after</p> <p>22 correspondence I received from Stuart Sandrock. And I</p> <p>23 went on the site just to see what it was about.</p> <p>24 Q I'm going to show you a group exhibit of</p> <p>25 three pages of photographs. I'll mark that as</p>	<p style="text-align: center;">39</p> <p>1 Q De he ever describe to you the condition of</p> <p>2 the ephemeral stream after the Witch Creek fires and</p> <p>3 after the winter storms of 2007/2008?</p> <p>4 A No.</p> <p>5 Q Did you ever have any understanding that he</p> <p>6 performed work on his property as a consequence of the</p> <p>7 Witch Creek fires and the winter storms of 2007/2008?</p> <p>8 A No.</p> <p>9 Q Sir, I'm going to hand you what I've marked</p> <p>10 as Exhibit 55. And Exhibit 55 is a stop work notice</p> <p>11 from the city of Poway dated February 7, 2008. Do you</p> <p>12 see that?</p> <p>13 A Yes.</p> <p>14 (Exhibit 55 marked)</p> <p>15 BY MR. SIMPSON:</p> <p>16 Q Is this the stop work notice or one of the</p> <p>17 stop work notices about which you testified earlier?</p> <p>18 MR. SIMPSON: Off the record.</p> <p>19 (Off the record)</p> <p>20 BY MR. SIMPSON:</p> <p>21 Q Sir, do you recognize Exhibit 55 as one of</p> <p>22 the stop work notices that the city of Poway sent to</p> <p>23 you?</p> <p>24 A Yes.</p> <p>25 Q The criticism here, is it your understanding</p>
<p style="text-align: center;">38</p> <p>1 Exhibit 54. Are those the photographs that you observed</p> <p>2 on the share kids web site?</p> <p>3 A Yes.</p> <p>4 (Exhibit 54 marked)</p> <p>5 BY MR. SIMPSON:</p> <p>6 Q Are any of the photographs in Exhibit 54</p> <p>7 photographs that depict the ephemeral stream?</p> <p>8 A I can't really see the stream in any of these</p> <p>9 photos, no.</p> <p>10 Q Did you ever talk to Dr. Moritz about what</p> <p>11 happened to his property after the Witch Creek fire?</p> <p>12 A I have never spoken to Dr. Moritz personally.</p> <p>13 Q Have you ever spoken to Lori Moritz?</p> <p>14 A Yes.</p> <p>15 Q When did you speak with her?</p> <p>16 A I spoke with her on the second inspection in</p> <p>17 August.</p> <p>18 Q August 29, 2008?</p> <p>19 A Correct.</p> <p>20 Q Other than that, have you spoken to either</p> <p>21 Lori or Dr. Moritz?</p> <p>22 A Spoken, no.</p> <p>23 Q You've communicated with Dr. Moritz in</p> <p>24 writing?</p> <p>25 A Via e-mail, yes.</p>	<p style="text-align: center;">40</p> <p>1 that it was importing of fill without a haul permit?</p> <p>2 A Yes.</p> <p>3 Q And it mentions on here contact Sam Tadros.</p> <p>4 Do you see that?</p> <p>5 A Yes.</p> <p>6 Q Did you ever contact Sam Tadros?</p> <p>7 A I have not contacted Sam Tadros.</p> <p>8 Q Have you ever had any communication at all</p> <p>9 with Sam Tadros?</p> <p>10 A One-on-one communication, no. I'm not even</p> <p>11 sure if he was at the meeting on June 9th. He may have</p> <p>12 been.</p> <p>13 Q Have you had any communications with Bill</p> <p>14 Moritz about his communications with Sam Tadros? That's</p> <p>15 T-a-d-r-o-s, by the way.</p> <p>16 A I have read correspondence from Mr. Sandrock</p> <p>17 concerning contacts. I mean, I remember Sam Tadros's</p> <p>18 name being in there.</p> <p>19 Q Have you ever heard from any source that Bill</p> <p>20 Moritz understood that he had Sam Tadros's permission to</p> <p>21 proceed notwithstanding the stop work notice of</p> <p>22 February 7, 2008?</p> <p>23 A I have read that in Dr. Moritz's -- or his</p> <p>24 representative's correspondence.</p> <p>25 Q Did you ever ask him about that or pursue</p>

<p style="text-align: center;">41</p> <p>1 that further?</p> <p>2 A Dr. Moritz?</p> <p>3 Q Dr. Moritz's belief that he had Sam Tadros's</p> <p>4 permission to do the work.</p> <p>5 A No, I haven't spoken with him regarding that.</p> <p>6 Q Why not?</p> <p>7 A I don't know.</p> <p>8 Q Sir, I'm going to hand you what I'm afraid is</p> <p>9 a bad copy, which is another stop work order. It's</p> <p>10 going to be marked as Exhibit 56. And although it's</p> <p>11 hard to read, it appears to be dated February 8, 2008.</p> <p>12 Do you see that?</p> <p>13 A Yes.</p> <p>14 (Exhibit 56 marked)</p> <p>15 BY MR. SIMPSON:</p> <p>16 Q Is this another of the two stop work notices</p> <p>17 that you testified about having received?</p> <p>18 A Yes.</p> <p>19 Q What is your understanding of the concern of</p> <p>20 the city of Poway as expressed in this stop work notice?</p> <p>21 A That grading an ephemeral stream is not</p> <p>22 allowed, and that all grading and import is to stop</p> <p>23 immediately.</p> <p>24 Q Now, this notice was issued by Don Sharp. Do</p> <p>25 you see that?</p>	<p style="text-align: center;">43</p> <p>1 such a way as to lead you to believe that Bill Moritz</p> <p>2 believed he had the authority of Jim Lyon to proceed</p> <p>3 with work that he was performing at this property?</p> <p>4 A I think he may have wrote that or his</p> <p>5 representative wrote that in communications that they</p> <p>6 provided.</p> <p>7 Q When did you hear that?</p> <p>8 A Stuart Sandrock provided me a letter and</p> <p>9 Dr. Moritz provided me correspondence. And later on I</p> <p>10 received from my assistant executive officer, a letter</p> <p>11 that I believe to be written by Lori Moritz. And it</p> <p>12 discussed communications between the city of Poway and</p> <p>13 Dr. Moritz and his understanding of it.</p> <p>14 Q Those communications that you've just</p> <p>15 described, were they after issuance of the cleanup and</p> <p>16 abatement order?</p> <p>17 A I would believe they were before issuance of</p> <p>18 the cleanup and abatement order.</p> <p>19 Q Do you know one way or another?</p> <p>20 A I would say before.</p> <p>21 Q Had you had e-mailed communications with my</p> <p>22 client before the June 9, 2008 meeting?</p> <p>23 A No.</p> <p>24 Q Any communications at all with my clients or</p> <p>25 their representatives before June 9, 2008?</p>
<p style="text-align: center;">42</p> <p>1 A Yes.</p> <p>2 Q And the name in the middle of the page is Jim</p> <p>3 Lyon and has a phone number there. Lyon is L-y-o-n. Do</p> <p>4 you see that?</p> <p>5 A Yes.</p> <p>6 Q Did you ever speak with Jim Lyon about this</p> <p>7 stop work notice?</p> <p>8 A No.</p> <p>9 Q Did you ever speak with Jim Lyon at all about</p> <p>10 the work that had been performed at my client's</p> <p>11 property?</p> <p>12 A I'm trying to remember whether or not</p> <p>13 Mr. Lyon attended the second August 29th meeting and I</p> <p>14 may have spoke to him there. Regarding this initial</p> <p>15 stop work order, no.</p> <p>16 Q So it might have been one of the people that</p> <p>17 you talked with at the meeting. But as far as this stop</p> <p>18 work order is specifically, you've not spoken with him,</p> <p>19 correct?</p> <p>20 A Correct.</p> <p>21 Q Did you ever speak with or communicate with</p> <p>22 Bill Moritz about conversations Bill Moritz had had with</p> <p>23 Jim Lyon?</p> <p>24 A No.</p> <p>25 Q Did Bill Moritz ever communicate with you in</p>	<p style="text-align: center;">44</p> <p>1 A No. No.</p> <p>2 Q Now, as of June 9, 2008, you already were</p> <p>3 planning to prepare a cleanup and abatement order and</p> <p>4 knew the contents of what you were planning to put in</p> <p>5 the cleanup and abatement order, correct?</p> <p>6 MR. LEON: Objection. That calls -- that</p> <p>7 fails to lay a foundation, and assuming facts not in</p> <p>8 evidence. Mischaracterizes the witness's testimony.</p> <p>9 MR. SIMPSON: Must be a good one.</p> <p>10 MR. LEON: Must be. You can go ahead and</p> <p>11 answer.</p> <p>12 BY MR. SIMPSON:</p> <p>13 Q You can answer if you can.</p> <p>14 A Could you repeat the question again?</p> <p>15 Q I don't think I could spit that one out</p> <p>16 twice.</p> <p>17 As of June 9, 2008, you already knew what you</p> <p>18 were planning to put into a proposed cleanup and</p> <p>19 abatement order, correct?</p> <p>20 A I knew that -- let me back up a minute and</p> <p>21 say that.</p> <p>22 MR. LEON: Just answer the question. Okay?</p> <p>23 THE WITNESS: Okay.</p> <p>24 MR. LEON: Don't --</p> <p>25 THE WITNESS: I was not -- I hadn't any</p>

<p style="text-align: center;">45</p> <p>1 planned course of action prior to the June 9th meeting. 2 A cleanup and abatement order was an option that could 3 be pursued, but I hadn't made any positive determination 4 that that's the way I was going until I met with 5 Mr. Sandrock and got more information, basically. 6 BY MR. SIMPSON: 7 Q When was it that you determined that you 8 ought to recommend -- well, strike that. 9 During the typical cleanup and abatement 10 order process, do you make a recommendation to your 11 supervisor who makes the recommendation up the chain of 12 command to ultimately the executive officer that a 13 cleanup and abatement order should issue? 14 A First, I discussed it with my supervisor. 15 And because this situation had occurred prior in Poway, 16 we determined that in order to be consistent, we would 17 issue a cleanup and abatement order. And then I began 18 drafting the cleanup and abatement order. I also 19 consulted Mark Alpert of the -- who was at that time the 20 supervisor of the compliance assurance unit, basically 21 our enforcement unit. 22 Q So you made a decision based on what other 23 situations had occurred in the city of Poway? 24 A There had been prior occurrences of private 25 residents filling in streams on their property without</p>	<p style="text-align: center;">47</p> <p>1 board would not need to step in. 2 Q When was it that you determined that the 3 regional board would need to step in? 4 A After meeting with Mr. Sandrock and reading 5 his correspondence. 6 Q Did you find him to be polarizing? 7 MR. LEON: Objection. Vague and ambiguous. 8 BY MR. SIMPSON: 9 Q Difficult? 10 A No, I didn't find Mr. Sandrock to be 11 difficult. I found him to be a distraction. 12 Q What do you mean by that? 13 A I had never had to attend a meeting with a 14 representative of a discharger and have undercover 15 police officers in attendance before. 16 Q Were there undercover police officers in 17 attendance? 18 A To the best of my knowledge, there may have 19 been, yes. 20 Q Do you know who that was? 21 A No, I don't know who it was. 22 Q Do you know whether they were acting on 23 behalf of Mr. Sandrock or on behalf of the Moritzes? 24 A The undercover police officers? 25 Q Yeah.</p>
<p style="text-align: center;">46</p> <p>1 the appropriate permits. 2 Q In fact, there is e-mail exchanges in the 3 file between RWQCB personnel that we have another 4 situation, right? 5 A I don't know what -- I'd have to see the 6 e-mails you're referring to. 7 Q After receiving the stop work notice that is 8 Exhibit 56, did you make any effort to contact Jim Lyon 9 about it? 10 A No. 11 Q Why not? 12 MR. LEON: Objection. It's argumentative. 13 Assumes facts not in evidence. Fails to lay a 14 foundation. Assumes that the client believed he had a 15 responsibility under some protocol to speak to 16 Mr. Lyons. 17 BY MR. SIMPSON: 18 Q You can answer. 19 MR. LEON: You can answer. 20 THE WITNESS: Could you repeat the question? 21 BY MR. SIMPSON: 22 Q Why not? 23 A Because at the time I was hoping that this 24 was a situation that could be resolved strictly between 25 the city of Poway and Dr. Moritz, and that the regional</p>	<p style="text-align: center;">48</p> <p>1 A No. They were there at the request of the 2 city of Poway. 3 Q Do you know why they were there? 4 A Because Mr. Sandrock was a convicted felon. 5 Q Was it your understanding that he was acting 6 as an attorney at that point? 7 A It was my understanding that he was acting as 8 a representative of Dr. Moritz. He made note when he 9 came in that he was a retired attorney, trial attorney. 10 Q I'm going to hand you what I've marked as 11 Exhibit 57. You mentioned earlier something about a 12 conversation confirmer, I believe. Is this one of the 13 conversation confirmer documents that you received from 14 Danis Bechter? 15 A Yes. 16 Q And this is dated March 21, 2008? 17 A Yes. 18 (Exhibit 57 marked) 19 BY MR. SIMPSON: 20 Q Is it your understanding that Bill Moritz was 21 asked to place BMPs at the toe of his fill? 22 A That's what this document states. 23 Q Do you know whether he did that? 24 A I believe he may have put a silt fence there. 25 Q Did you observe a silt fence when you were</p>

<p style="text-align: center;">49</p> <p>1 there --</p> <p>2 A Yes.</p> <p>3 Q -- on June 9, 2008?</p> <p>4 A I would have to see my inspection report to</p> <p>5 refresh my memory, but I believe there was a silt fence</p> <p>6 there at the time.</p> <p>7 Q Sir, I'm going to hand you what I've marked</p> <p>8 as Exhibit 58, consisting of two pages. That is your</p> <p>9 supporting document No. 5 from your recent prosecutorial</p> <p>10 submittal. Is that your inspection report that you've</p> <p>11 just mentioned?</p> <p>12 A It's not the complete inspection report. It</p> <p>13 is the first two pages of my inspection report.</p> <p>14 Q What pages are missing?</p> <p>15 A The photographic -- let's see. A location</p> <p>16 map, two photographs that I obtained off of the</p> <p>17 internet, aerial photographs off the internet of the</p> <p>18 Moritz property, a picture provided, which is now</p> <p>19 Exhibit 53, and I believe a photo of the finished pipe</p> <p>20 that was provided by Danis Bechter.</p> <p>21 (Exhibit 58 marked)</p> <p>22 BY MR. SIMPSON:</p> <p>23 Q A closeup of the northern end of the pipe is</p> <p>24 the last photograph you've just mentioned?</p> <p>25 A It's one of the first photos I was provided</p>	<p style="text-align: center;">51</p> <p>1 Q What's the difference?</p> <p>2 A Erosion control BMPs are any sort of best</p> <p>3 management practice which keeps soil in place during a</p> <p>4 precipitation event. Sediment control BMPs are best</p> <p>5 management practices that capture sediment after it's</p> <p>6 become mobile during a precipitation event.</p> <p>7 Q What sedimentation controls did you see on</p> <p>8 the property in August?</p> <p>9 A I saw three straw wattles, I saw a silt</p> <p>10 fence. Those were the settlement control BMPs.</p> <p>11 Q When you were there in August, at that point</p> <p>12 a cleanup and abatement order had already issued, right?</p> <p>13 A Correct.</p> <p>14 Q And you recommended the addition of some</p> <p>15 additional straw wattles and staking through the straw</p> <p>16 wattles rather than on the sides of them, right?</p> <p>17 A I made note that the straw wattles had been</p> <p>18 installed improperly and provided suggestions on how</p> <p>19 they could be appropriately installed.</p> <p>20 Q And Caltrans guides are one of the methods by</p> <p>21 which such straw wattles can properly be installed,</p> <p>22 right?</p> <p>23 A Caltrans BMP manual is one. The CASQA storm</p> <p>24 water manual BMP is another.</p> <p>25 Q Can you provide the court reporter that</p>
<p style="text-align: center;">50</p> <p>1 in the initial -- by Danis Bechter, after the pipe had</p> <p>2 been installed.</p> <p>3 Q Sir, I'm going to hand you what I've marked</p> <p>4 as Exhibit 59. Can you tell me whether that is your</p> <p>5 complete inspection report from the June 9, 2008</p> <p>6 inspection?</p> <p>7 A Yes.</p> <p>8 (Exhibit 59 marked)</p> <p>9 BY MR. SIMPSON:</p> <p>10 Q Did you observe a silt fence as of your</p> <p>11 June 9, 2008 inspection?</p> <p>12 A Yes, I did.</p> <p>13 Q What about other sedimentary erosion control</p> <p>14 BMPs? Did you see any?</p> <p>15 A No.</p> <p>16 Q How many times have you been out to observe</p> <p>17 my client's property?</p> <p>18 A Twice.</p> <p>19 Q The other time was August 29, 2008?</p> <p>20 A Correct.</p> <p>21 Q When you were out there in August of 2008,</p> <p>22 did you see erosion control BMPs?</p> <p>23 A No.</p> <p>24 Q Did you see sediment control BMPs?</p> <p>25 A Yes.</p>	<p style="text-align: center;">52</p> <p>1 acronym?</p> <p>2 A CASQA is C-A-S-Q-A. I can't -- California --</p> <p>3 I can't remember.</p> <p>4 Q The acronym is fine. Sorry.</p> <p>5 Did you ever go back to determine whether the</p> <p>6 sediment controls were changed following that</p> <p>7 August 28th, 2008 meeting?</p> <p>8 A No.</p> <p>9 Q Did you hear from any source whether they</p> <p>10 were?</p> <p>11 A I don't recall.</p> <p>12 (Recess taken)</p> <p>13 BY MR. SIMPSON:</p> <p>14 Q Sir, I'm going to hand you Exhibit 60. Is</p> <p>15 that the proposed or tentative cleanup and abatement</p> <p>16 order, R-9-2008-0152?</p> <p>17 A Yes.</p> <p>18 (Exhibit 60 marked)</p> <p>19 BY MR. SIMPSON:</p> <p>20 Q Did you draft this?</p> <p>21 A Yes.</p> <p>22 Q And is this reviewed by Ms. Clemente?</p> <p>23 A Yes.</p> <p>24 Q And it's been reviewed by the executive</p> <p>25 officer as well?</p>

<p style="text-align: center;">53</p> <p>1 A It was not reviewed by Ms. Clemente because</p> <p>2 she was out sick at the time this was drafted.</p> <p>3 Q Who else has reviewed this within the</p> <p>4 regional board before making this part of the</p> <p>5 February 11, 2009 hearing submittals?</p> <p>6 A I believe Jeremy Haus, the acting supervisor</p> <p>7 of the compliance and assurance unit took a look at it,</p> <p>8 and David Barker, and Mike McCann.</p> <p>9 Q Turning back to the requirements of the</p> <p>10 proposed cleanup and abatement order, I think it's</p> <p>11 Page 4, underneath the language it is hereby ordered, do</p> <p>12 you see that?</p> <p>13 A Yes.</p> <p>14 Q Is this where the regional board prescribes</p> <p>15 what is going to be ordered if this cleanup and</p> <p>16 abatement order issues?</p> <p>17 A These are the directives of the cleanup and</p> <p>18 abatement order.</p> <p>19 Q Those are directives numbers 1 through 5,</p> <p>20 correct?</p> <p>21 A Yes.</p> <p>22 Q Now, No. 3 has a number of subcategories, A</p> <p>23 through F. Do you see those?</p> <p>24 A Yes.</p> <p>25 Q Are those the specific measures that you</p>	<p style="text-align: center;">55</p> <p>1 A Yes.</p> <p>2 Q That's one of the requirements of this</p> <p>3 tentative cleanup and abatement order, right?</p> <p>4 A Yes.</p> <p>5 Q Likewise, another requirement is restoring</p> <p>6 elevations of the stream channel bottom and the banks</p> <p>7 and floodplain to pre-discharge conditions, correct?</p> <p>8 A Yes.</p> <p>9 Q And that specifies the design of the stream</p> <p>10 must meet the preexisting design from back in 2005,</p> <p>11 right?</p> <p>12 A Not exactly, no.</p> <p>13 Q So this has nothing to do with the design of</p> <p>14 the stream?</p> <p>15 A Could you rephrase the question?</p> <p>16 Q Okay. Well, let's look at Item No. 3C here.</p> <p>17 It says realigning the stream channel to its</p> <p>18 pre-discharge location. One of the things in the</p> <p>19 tentative cleanup and abatement order here that the</p> <p>20 regional board would require is realigning of the stream</p> <p>21 channel to the pre-discharge location, right?</p> <p>22 A Right.</p> <p>23 Q So it's specifying the design of the restored</p> <p>24 stream to require it to not only be aligned where it was</p> <p>25 before, but also for it to have the same elevations that</p>
<p style="text-align: center;">54</p> <p>1 propose that the regional board adopt and require of the</p> <p>2 Moritzes?</p> <p>3 A Those are the activities required to restore</p> <p>4 the stream to its pre-project condition.</p> <p>5 Q When you say pre-project condition, are you</p> <p>6 referring to the condition that it existed in 2005? Or</p> <p>7 in the condition it existed after the Witch Creek fires,</p> <p>8 after the winter storms, and before he did any work in</p> <p>9 February 2008?</p> <p>10 A It would generally have to be 2005, because I</p> <p>11 don't believe any topographic information is available</p> <p>12 for 2007. So as of 2005 as it said in the amended</p> <p>13 stream restoration plan that was provided by Dr. Moritz.</p> <p>14 Q So you believe that, and by putting this Item</p> <p>15 No. 3 in the cleanup and abatement order, tentative</p> <p>16 cleanup and abatement order, you believe that Bill</p> <p>17 Moritz is going to have to restore the stream to the</p> <p>18 same elevations that it existed in 2005?</p> <p>19 A I'd have to look at the restoration plan</p> <p>20 again. He needs to do it as it was proposed. It won't</p> <p>21 be exactly, but it will be somewhere close.</p> <p>22 Q Well, Item No. 3A, for example, says the</p> <p>23 first thing, paraphrasing, he needs to remove the sand,</p> <p>24 silt, clay, rock and other earthen materials discharged</p> <p>25 to the waters of the state. Do you see that?</p>	<p style="text-align: center;">56</p> <p>1 it did before, right?</p> <p>2 A As proposed in the 2008 – September 18, 2008</p> <p>3 amended stream restoration plan.</p> <p>4 Q Where does it say the September 2008 amended</p> <p>5 stream restoration plan?</p> <p>6 A In directive 2.</p> <p>7 Q Okay. That's a separate directive from</p> <p>8 No. 3, correct?</p> <p>9 A Correct.</p> <p>10 Q In Item No. 3, it says independently of Item</p> <p>11 No. 2 that the order requirements of the Moritzes would</p> <p>12 be, among other things, to realign the stream to its</p> <p>13 pre-discharge location, and also to restore the</p> <p>14 elevation of the channel bottom, banks and floodplain to</p> <p>15 pre-discharge locations, correct?</p> <p>16 A Correct.</p> <p>17 Q So it's not just incorporating the stream</p> <p>18 restoration plan that was proposed in September 2008,</p> <p>19 but it's going beyond that and specifying specifically</p> <p>20 in Item No. 3 the design of the stream, right?</p> <p>21 MR. LEON: Object, because there hasn't been</p> <p>22 a foundation laid with respect to the nature of the</p> <p>23 requirements under the 2008 amended stream restoration</p> <p>24 plan and the distinctions that that might have with the</p> <p>25 requirements set forth in No. 3. And it's argumentative</p>

<p style="text-align: center;">57</p> <p>1 and assumes facts that are not in evidence.</p> <p>2 BY MR. SIMPSON:</p> <p>3 Q You can answer.</p> <p>4 A The intent of directive 3 is to restore the</p> <p>5 stream to its pre-project impacts, pre-project</p> <p>6 configuration.</p> <p>7 Q In other words, part of the RWQCB, if it</p> <p>8 adopts this, is telling the Moritzes how to restore the</p> <p>9 stream by specifying the design. And that design is the</p> <p>10 preexisting condition, right?</p> <p>11 A Not exactly, no.</p> <p>12 Q How does it differ?</p> <p>13 A We are requesting that the stream be</p> <p>14 restored, and then elements of the restoration that are</p> <p>15 necessary to have that happen, to have the stream</p> <p>16 restored to its pre-project configuration are here. How</p> <p>17 that's to be done -- we're not prescribing how it's to</p> <p>18 be done. We're prescribing what's required to restore</p> <p>19 the creek.</p> <p>20 Q When you're saying you're not prescribing how</p> <p>21 it's to be done, you mean that he can use bulldozers</p> <p>22 versus shovels? That's his choice? What do you mean?</p> <p>23 A I mean, yes, the way he goes about it is up</p> <p>24 to him.</p> <p>25 Q But the design must be the same design as it</p>	<p style="text-align: center;">59</p> <p>1 Q I'm going to hand you what I've marked as</p> <p>2 Exhibit 61 and ask you if you can tell me what that is.</p> <p>3 Let me ask it this way. Do you recognize this as -- a</p> <p>4 figure as part of the stream restoration plan that was a</p> <p>5 proposal for sediment control?</p> <p>6 A It looks similar to that. I can't say for</p> <p>7 sure that this, with this writing on here, if it is a</p> <p>8 part of the plan. I'd have to see the final stream bed</p> <p>9 plan again to confirm that. It does look familiar.</p> <p>10 (Exhibit 61 marked)</p> <p>11 BY MR. SIMPSON:</p> <p>12 Q Do you know whether the fiber rolls that were</p> <p>13 identified in this particular exhibit, 61, were ever</p> <p>14 installed at the site?</p> <p>15 A I don't know.</p> <p>16 Q Do you know whether they were installed --</p> <p>17 well, strike that.</p> <p>18 The regional board approved the stream</p> <p>19 restoration plan that Dr. Moritz submitted in September</p> <p>20 2008, right?</p> <p>21 A We reviewed it and we found it to be</p> <p>22 acceptable.</p> <p>23 Q Is that different from approving it?</p> <p>24 A I would think so, yes.</p> <p>25 Q What's the difference?</p>
<p style="text-align: center;">58</p> <p>1 existed before he did any work, correct?</p> <p>2 A That's the point, yes.</p> <p>3 Q For example, he must remove the drainage</p> <p>4 pipe, right?</p> <p>5 A Yes.</p> <p>6 Q Do you have any understanding whether that</p> <p>7 drainage pipe still is in the ground?</p> <p>8 A I believe portions of it are still in the</p> <p>9 ground.</p> <p>10 Q Do you know whether the portions that are</p> <p>11 still in the ground are in the former ephemeral stream</p> <p>12 bed?</p> <p>13 A I'm unable to see underground, so I can't</p> <p>14 tell you exactly where they are. But from diagrams</p> <p>15 provided by Dr. Moritz's consultants in the amended</p> <p>16 stream restoration plan, I would assume that good</p> <p>17 portions of the pipe are placed within the stream bed.</p> <p>18 Q Do you know what portions have been removed?</p> <p>19 A No.</p> <p>20 Q Do you know whether portions have been</p> <p>21 removed?</p> <p>22 A I believe that during the city of Poway's</p> <p>23 work on the project, from what I understand, some or a</p> <p>24 portion of the pipe was encountered when they were doing</p> <p>25 their work, and that was removed.</p>	<p style="text-align: center;">60</p> <p>1 A Approval to me means that we are giving a</p> <p>2 stamp saying absolutely, this is the way to do it.</p> <p>3 Acceptance means we've looked at it and it will meet the</p> <p>4 goals that we had intended.</p> <p>5 Q What were the goals that the RWQCB intended?</p> <p>6 A To restore the creek as closely as possible</p> <p>7 to what was there before and put back the functions and</p> <p>8 the hydrological and ecological functions that the</p> <p>9 stream had prior to.</p> <p>10 Q Is it your understanding -- I'm sorry. I</p> <p>11 didn't mean to walk on your answer.</p> <p>12 A I'm done.</p> <p>13 Q Was it your understanding that there was</p> <p>14 going to be a remedy at the upgradient end of the pipe</p> <p>15 to prevent it from conveying storm water from the</p> <p>16 northern portion of the property to the southern?</p> <p>17 A I don't quite understand your question.</p> <p>18 Q On Exhibit 61, it mentions at the top "plug</p> <p>19 entrance to culvert with Portland cement concrete." Do</p> <p>20 you see that?</p> <p>21 A Yes.</p> <p>22 Q Was part of the concern of the regional board</p> <p>23 the functioning of that particular pipe, in an effort to</p> <p>24 disable it?</p> <p>25 A I believe that during our August 29th</p>

<p style="text-align: center;">61</p> <p>1 meeting, yes, I did -- I did show -- express some 2 concern about plugging that pipe and utilizing the next 3 door neighbor's property as a sedimentation basin, yes. 4 Q And there was also discussion about a 5 sedimentation basin on the southern end of the pipe? 6 A We did discuss that. 7 Q Do you know whether the city of Poway 8 approved work on either end of that pipe so that Bill 9 Moritz could proceed with the construction? 10 A I don't know. 11 Q Do you know what steps are necessary in order 12 for a homeowner such as Bill Moritz to obtain approval 13 to do that type of work? 14 A Are we talking specifically about plugging 15 the culvert? 16 Q Yes. 17 A Well, I would assume that Dr. Moritz would 18 need to get permission from his next door neighbor, 19 since he would be -- since he built that portion on his 20 neighbor's property, and that he was intending to use -- 21 by plugging the culvert at the northern end of the 22 property, he was intending to allow his neighbor's 23 property to act as a sedimentation basin. 24 And now do you want me to address the silt 25 fence at the bottom here?</p>	<p style="text-align: center;">63</p> <p>1 order that was proposed? 2 A No. 3 Q How about in the preparation of the previous 4 cleanup and abatement order? 5 A No. 6 Q Do you know whether the regional board, in 7 setting its water quality objectives, took into account 8 any economic considerations? 9 MR. LEON: I'm going to object to that as 10 irrelevant and not likely to lead to any relevant 11 information. It doesn't have anything to do with the 12 case. 13 THE WITNESS: And I don't understand your 14 question. 15 BY MR. SIMPSON: 16 Q What are the water quality objectives for 17 this particular area? 18 A The water -- I'm -- the water quality 19 objectives for -- that would be contained in the basin 20 plan. And off the top of my head, I can't provide you 21 with every water quality objective necessary. 22 Q Do water quality objectives have anything to 23 do with Bill Moritz's cleanup and abatement order that 24 you're proposing here? 25 A Mr. Moritz's actions affected the beneficial</p>
<p style="text-align: center;">62</p> <p>1 Q No. 2 A No? 3 Q Do you know how much the stream restoration 4 plan cost? 5 A I know -- not for a fact, no. 6 Q Do you know how much permitting for 7 performing work described in the stream restoration plan 8 would cost? 9 A I know how much -- well, if a 401 10 certification was necessary to do the restoration work, 11 that would cost \$500. I'm unaware of city of Poway fees 12 for getting the grading permit that would be required to 13 do the restoration work, and I'm not exactly sure how 14 much fish and game is charging right now for a stream 15 bed alteration agreement. 16 Q How about the engineering costs in order to 17 prepare the plans that would be acceptable for the city 18 of Poway? Any idea what that would cost? 19 A No, I don't. 20 Q Did economic considerations play any part in 21 the analysis of the cleanup and abatement order that 22 you're proposing? 23 A No. 24 Q Did you ever consider economic considerations 25 of the Moritzes in preparing the cleanup and abatement</p>	<p style="text-align: center;">64</p> <p>1 uses of the water, it affected the hydrological and 2 ecological function of the stream, and in that way, yes, 3 Mr. Moritz's actions have removed the beneficial uses 4 throughout that stretch of his creek that the basin plan 5 provides for. 6 Q Now, it's acceptable, is it not, for 7 individuals to change the quality of water to some 8 degree even though it might affect beneficial uses? 9 MR. LEON: Calls for a legal conclusion to 10 some extent. It's argumentative and perhaps asks the 11 witness to speculate. 12 THE WITNESS: Could you repeat the question, 13 please? 14 BY MR. SIMPSON: 15 Q It's possible for people such as Dr. Moritz 16 to change the quality of water without unreasonably 17 affecting beneficial uses, right? 18 A I don't understand the question. 19 Q Do you know what the quality of water is, 20 storm water is, as it enters onto Bill Moritz's property 21 in a rain event? 22 A No. 23 Q Never measured it? 24 A No, I have not. 25 Q Do you know whether the regional board has</p>

<p style="text-align: center;">65</p> <p>1 ever done any inspection or test by which it could 2 determine the quality of the water as it enters onto 3 Bill Moritz's property during a rain event? 4 A I don't know. 5 Q How about as it -- as water comes off of the 6 property? Has the regional board ever done any 7 inspection or test to determine the quality of water as 8 it exits the Moritz property? 9 A Only that I have seen pictures of the 10 property by the city of Poway putting in their interim 11 BMPs. I have seen it during a rain event, a picture of 12 it. 13 Q What did you conclude based upon the picture? 14 A That water was going across his property, 15 there was some sediment in it from upstream. 16 Q Did you make any determination whether the 17 water quality was degraded as it exited his property? 18 A I don't have enough information to make that 19 determination. 20 Q Because you don't have any inspection or 21 tests, right? 22 A To my knowledge, there -- I have conducted no 23 tests or investigations as to constituents contained in 24 storm water crossing Dr. Moritz's property. 25 Q Do you believe that the Moritz property, as</p>	<p style="text-align: center;">67</p> <p>1 Q The historical photographs you're talking 2 about are four in number? 3 A I've looked at a lot of historical photos, on 4 the web and that I've purchased from -- or the state has 5 purchased from historicaerials.com. I didn't purchase 6 all the ones I looked at. 7 Q Are those part of the record? 8 A Those are part one of -- the photos I 9 purchased is part of the evidence package I provided to 10 you. I can't tell you what supporting document it is. 11 It's supporting document one. 12 Q And one of those is an aerial photograph from 13 1964, correct? 14 A Correct. I also purchased an aerial photo 15 from 2003. I have aerial photos provided by the city of 16 Poway during 2005, and aerial photos that were provided 17 in the first inspection report that I got off of a 18 mapping web site. 19 Q Getting back to Exhibit 60, the cleanup and 20 abatement order that is proposed, paragraph No. 2, maybe 21 you can take a moment and look at that briefly. I'm not 22 going to go through the whole thing, but a couple 23 sentences. 24 MR. LEON: You're talking about finding No. 25 2, Counsel?</p>
<p style="text-align: center;">66</p> <p>1 it existed in August 2008, threatened to degrade water 2 quality? 3 A I don't know. 4 Q How about as his property exists today? Do 5 you believe that his property as it exists today 6 threatens water quality? 7 A Potentially. 8 Q How? 9 A The fill that's been placed in the stream bed 10 has altered the hydrology of that ephemeral drainage, 11 it's removed any ecological benefit that the prior 12 ephemeral drainage may have contained. 13 Q When you say ecological benefit, what do you 14 mean? 15 A Landscape connectivity, connecting upper -- 16 you basically removed the ability of the ephemeral 17 drainage to transport sediment, transport nutrients, 18 remove -- pollutant removal. It's hard to say if the 19 ephemeral drainage provided any cover for animals or 20 birds, because I'm not able to tell you exactly what the 21 creek looked like prior to him filling it in. I can 22 only go by historical photos that I've seen. 23 Q Do you have -- and the historical photographs 24 you're talking about are four in number? 25 A Pardon?</p>	<p style="text-align: center;">68</p> <p>1 MR. SIMPSON: Well, it's paragraph No. 2, 2 but -- it doesn't say finding No. 2. 3 MR. LEON: Page 1? 4 THE WITNESS: Yeah. 5 MR. SIMPSON: Yeah. Page 1. 6 THE WITNESS: Yes. Okay. 7 BY MR. SIMPSON: 8 Q It begins there on or about February 7, 9 Dr. Bill Moritz discharged waste. Do you see that? 10 A Yes. 11 Q The conclusion or the finding that's made 12 there, is that based on communications from the city of 13 Poway? 14 A It's based on communications from the city of 15 Poway, conversation we had with Sean Marsden the first 16 time we were there, I believe. And if my memory serves 17 me correctly, that is what Stuart Sandrock told us at 18 the first June 9th meeting. 19 Q Do you know whether he said that? 20 A Not for sure. I seem to recall it. I seem 21 to recall requesting that information -- exact 22 information from him, but I don't know if I ever got the 23 answer back. 24 Q You made a request to him in writing, didn't 25 you, for an estimate as to the volume of waste?</p>

<p style="text-align: center;">69</p> <p>1 A Mm-hmm.</p> <p>2 Q And the dates when it was placed?</p> <p>3 A Yes.</p> <p>4 Q And you don't know whether you ever got a</p> <p>5 response to that?</p> <p>6 A I don't believe he ever fully answered the</p> <p>7 question.</p> <p>8 Q So the information that is in finding No. 2</p> <p>9 comes from the city of Poway and from Sean Marsden,</p> <p>10 correct?</p> <p>11 A Yes.</p> <p>12 Q It says discharged waste. Now, when you say</p> <p>13 "waste," what is your understanding of the meaning of</p> <p>14 that term as an enforcement officer for the RWQCB?</p> <p>15 A That is the discharge of the dredge and fill</p> <p>16 material -- well, the fill material that Dr. Moritz</p> <p>17 imported onto his site and placed in the stream.</p> <p>18 Q What do you base the conclusion that fill</p> <p>19 material is waste?</p> <p>20 MR. LEON: Calls for a legal conclusion.</p> <p>21 BY MR. SIMPSON:</p> <p>22 Q You can answer.</p> <p>23 A I base it on that the discharge of fill</p> <p>24 material into waters of the state either requires a 401</p> <p>25 certification or waste discharge requirements, and thus</p>	<p style="text-align: center;">71</p> <p>1 that a jurisdictional delineation has not been done. So</p> <p>2 it's -- it could potentially be waters of the U.S. under</p> <p>3 federal jurisdiction. It could not.</p> <p>4 Q We just don't know as we sit here today?</p> <p>5 A Right. I think it would take a forensic</p> <p>6 jurisdictional determination to determine that.</p> <p>7 Q Okay. If indeed there is no assertion of</p> <p>8 United States jurisdiction, then is the dumping of fill</p> <p>9 material in the ephemeral stream area waste?</p> <p>10 A Yes.</p> <p>11 Q Why?</p> <p>12 A Because it's still a waters of the state, and</p> <p>13 the fill material could be considered a waste that's</p> <p>14 been discharged into the stream.</p> <p>15 Q And you're basing that on definitions in the</p> <p>16 California water code of waste and waters of the state?</p> <p>17 A I'm basing it on my experience in doing 401</p> <p>18 water quality certifications and the issuance of waste</p> <p>19 discharge requirements for dredge or fill material into</p> <p>20 waters that are not considered by the federal government</p> <p>21 to be waters of the United States.</p> <p>22 Q Setting aside 401 certification, if we're not</p> <p>23 going to have jurisdiction of the United States, then</p> <p>24 aren't we just determining whether we have waste in</p> <p>25 waters of the state?</p>
<p style="text-align: center;">70</p> <p>1 fill or material placed into a waters of the U.S. is --</p> <p>2 can be considered waste.</p> <p>3 Q Now, if -- you're an enforcement officer for</p> <p>4 the RWQCB. And one of the things that you do is see</p> <p>5 whether the facts violate the law, correct?</p> <p>6 A Yes.</p> <p>7 Q That's part of your job duty, right?</p> <p>8 A Yes.</p> <p>9 Q Now, as far as this stream is concerned, have</p> <p>10 you heard from any source that the United States is</p> <p>11 asserting jurisdiction over that particular ephemeral</p> <p>12 stream?</p> <p>13 A No.</p> <p>14 Q Have you determined from any source whether</p> <p>15 the United States can assert jurisdiction over that</p> <p>16 ephemeral stream in light of existing precedent?</p> <p>17 A It's possible.</p> <p>18 Q Have you heard that the United States is not</p> <p>19 going to assert any jurisdiction over that ephemeral</p> <p>20 stream?</p> <p>21 A I have heard from Robert Smith at the Army</p> <p>22 Corps of Engineers, and through you, that the Army Corps</p> <p>23 is overwhelmed right now, and I believe in an e-mail</p> <p>24 that I can't remember the date of, they offered for your</p> <p>25 client to accept jurisdiction, which you declined, but</p>	<p style="text-align: center;">72</p> <p>1 A Yes.</p> <p>2 Q And that's the question of whether there are</p> <p>3 going to be WDRs issued under 13260?</p> <p>4 A That would be an option, yes.</p> <p>5 Q Is it your understanding that the terms waste</p> <p>6 and waters of the state are defined by water code</p> <p>7 section 13050?</p> <p>8 A I believe so, yes.</p> <p>9 Q And that's what you mention here on Item</p> <p>10 No. 4, among other things, of Exhibit 60?</p> <p>11 A Yes.</p> <p>12 Q 13050E of the California water code doesn't</p> <p>13 actually include ephemeral streams as a water course by</p> <p>14 definition, does it?</p> <p>15 A I don't have it in front of me, so I can't</p> <p>16 tell you exactly what it says.</p> <p>17 Q I don't have an extra copy to give you, but</p> <p>18 the definition I see in the code section in front of me,</p> <p>19 13050 says, quote, waters of the states, unquote, means</p> <p>20 any surface water or ground water including saline</p> <p>21 waters within the boundaries of the state. Is that your</p> <p>22 understanding of the phrase of the definition of waters</p> <p>23 of the state?</p> <p>24 A Yes.</p> <p>25 Q And how is it that this ephemeral stream that</p>

<p style="text-align: center;">73</p> <p>1 is dry most of the time is water of the state?</p> <p>2 A Well, they used to be considered waters of</p> <p>3 the U.S., and waters of the U.S. is a subset of waters</p> <p>4 of the state. The definition provided in Porter-Cologne</p> <p>5 of waters of the state paints a very broad brush, and it</p> <p>6 would include ephemeral drainages.</p> <p>7 Q How do you know that?</p> <p>8 MR. LEON: I'm going to object. This is</p> <p>9 getting way too deep into legal issues. He testified</p> <p>10 that he has a B.S. in environmental sciences. He has</p> <p>11 not testified that he has a law degree or that he ever</p> <p>12 went to law school. The line of question you're</p> <p>13 pursuing clearly is something that could be addressed in</p> <p>14 briefing to the board, and it seems like a waste of time</p> <p>15 to move much more with this.</p> <p>16 BY MR. SIMPSON:</p> <p>17 Q Let me ask you this, then. I don't normally</p> <p>18 just go on, but well taken. Is there a policy to --</p> <p>19 within the regional board to protect ephemeral streams</p> <p>20 as though they were flowing streams using the 13304</p> <p>21 cleanup and abatement order process or the WDR process?</p> <p>22 A Could you repeat the question?</p> <p>23 Q Is there a policy at the regional board to</p> <p>24 protect ephemeral streams even though they aren't</p> <p>25 typically flowing?</p>	<p style="text-align: center;">75</p> <p>1 BY MR. SIMPSON:</p> <p>2 Q What did he say about that?</p> <p>3 A I believe I saw the -- I did see the original</p> <p>4 stream bed alteration agreement application that he</p> <p>5 provided to fish and game where he wrote that there was</p> <p>6 a storm water component to his project.</p> <p>7 Q Do you know what the watershed is that</p> <p>8 involves the property where this ephemeral stream is</p> <p>9 that crosses my client's property? Bad question, but --</p> <p>10 A It's hydrologic sub area 906.20.</p> <p>11 Q And you find that in the cleanup and</p> <p>12 abatement order?</p> <p>13 A Yes.</p> <p>14 Q Item No. 9?</p> <p>15 A Yes.</p> <p>16 Q What is the receiving body of water, if any?</p> <p>17 A Receiving body of water of what?</p> <p>18 Q Of this ephemeral drainage.</p> <p>19 A It is an unnamed tributary to Rattlesnake</p> <p>20 Creek.</p> <p>21 Q And Rattlesnake Creek leads to what?</p> <p>22 A Rattlesnake Creek comes down and meets Poway</p> <p>23 Creek.</p> <p>24 Q And then Poway Creek goes where?</p> <p>25 A To Los Penasquitos Creek.</p>
<p style="text-align: center;">74</p> <p>1 A Could you define what you mean by a policy?</p> <p>2 Q Have you been trained or told that part of</p> <p>3 your job duty is to protect ephemeral streams that don't</p> <p>4 typically flow by issuing or requiring the issuance of</p> <p>5 WDRs or cleanup and abatement orders?</p> <p>6 A Yes.</p> <p>7 Q Do you know what that policy or procedure is</p> <p>8 that you've been told about?</p> <p>9 A You asked if I was trained. And when I began</p> <p>10 doing 401 certifications, I absolutely was told and</p> <p>11 trained to protect ephemeral drainages, and protect --</p> <p>12 and protect them like I would any other perennial or</p> <p>13 intermittent stream.</p> <p>14 Q And how about waste? Have you been trained</p> <p>15 that fill that somebody actually wants to have on their</p> <p>16 property, the regional board will view as waste?</p> <p>17 A If it's placed in a stream, yes.</p> <p>18 Q Did Bill Moritz ever communicate with you his</p> <p>19 belief that he needed to put the pipe on his property in</p> <p>20 order to protect his property from storm water flows</p> <p>21 from upstream?</p> <p>22 A That is one of the --</p> <p>23 MR. LEON: Just answer the question.</p> <p>24 THE WITNESS: Yes.</p> <p>25 ///</p>	<p style="text-align: center;">76</p> <p>1 Q And then that goes where?</p> <p>2 A Ultimately to Los Penasquitos Lagoon.</p> <p>3 Q And the ocean?</p> <p>4 A And then to the ocean.</p> <p>5 Q Is the Los Penasquitos Lagoon the receiving</p> <p>6 body of water of this ephemeral stream ultimately?</p> <p>7 A Yes.</p> <p>8 Q Do you believe that the condition of the</p> <p>9 Moritz property as it exists today significantly affects</p> <p>10 the water quality of that or any receiving body of</p> <p>11 water?</p> <p>12 A Yes.</p> <p>13 Q In what way?</p> <p>14 A It's part of the watershed. It's a head</p> <p>15 water stream. It is imbued with the same beneficial</p> <p>16 uses that Rattlesnake Creek has, and it's part of the</p> <p>17 watershed. In a watershed context, every ephemeral</p> <p>18 stream, every tributary, every larger order stream</p> <p>19 contributes to the health, ultimately, of the watershed</p> <p>20 and the receiving waters in the watershed.</p> <p>21 Q Can you quantify the effect that the Moritz</p> <p>22 property has on the receiving body of water?</p> <p>23 A No.</p> <p>24 Q Do you know how large the watershed is that</p> <p>25 ultimately leads to that receiving body of water?</p>

<p style="text-align: center;">77</p> <p>1 A No.</p> <p>2 Q Any idea of the -- well, of the</p> <p>3 characteristics of the water quality as it leaves or</p> <p>4 enters the Moritz property currently?</p> <p>5 A No.</p> <p>6 Q So what you've told me is that you believe,</p> <p>7 based on your own belief, that this property nonetheless</p> <p>8 affects the receiving body of water significantly?</p> <p>9 MR. LEON: Objection. Assumes -- rather,</p> <p>10 mischaracterizes the witness's testimony. It is</p> <p>11 argumentative.</p> <p>12 THE WITNESS: The ephemeral stream that once</p> <p>13 existed on Dr. Moritz's property contributes over -- at</p> <p>14 one time when it was there contributed to water quality</p> <p>15 within the whole watershed.</p> <p>16 BY MR. SIMPSON:</p> <p>17 Q Do you believe if something were to be done</p> <p>18 on his property that it would even be measurable at the</p> <p>19 receiving body of water?</p> <p>20 A That's a vague question, because I don't --</p> <p>21 you're not specifying what it is we're measuring or what</p> <p>22 constituent or what water quality parameter you're</p> <p>23 wanting to measure.</p> <p>24 Q Well, one of the things that the Regional</p> <p>25 Water Quality Control Board is concerned about is</p>	<p style="text-align: center;">79</p> <p>1 acres?</p> <p>2 A I do not.</p> <p>3 Q Could you identify any aquatic species that</p> <p>4 are dependent on the native sediment on the Moritz</p> <p>5 property?</p> <p>6 A Aquatic species?</p> <p>7 Q Yes.</p> <p>8 A No.</p> <p>9 Q I'm looking at Item No. 5 here, and one of</p> <p>10 the concerns that's been raised is the threatened</p> <p>11 habitat for aquatic species that are dependent on native</p> <p>12 sedimentation and vegetation. Do you see that?</p> <p>13 A Where do you see that?</p> <p>14 Q Last sentence of Paragraph 5.</p> <p>15 A It could be aquatic macroinvertebrates that</p> <p>16 are brought down from the watershed above, above into</p> <p>17 the stream.</p> <p>18 Q Any idea of any species that were ever there?</p> <p>19 A Of aquatic species?</p> <p>20 Q Yes.</p> <p>21 A No.</p> <p>22 Q That's just speculation?</p> <p>23 A It's more of a general observation about</p> <p>24 effects of the discharge of waste on water bodies.</p> <p>25 Q Not based on this particular instance,</p>
<p style="text-align: center;">78</p> <p>1 turbidity, right?</p> <p>2 A In some cases, yes.</p> <p>3 Q Is that a concern about turbidity here?</p> <p>4 A Turbidity could be a concern, yes.</p> <p>5 Q How about color or sediment load?</p> <p>6 A Yes.</p> <p>7 Q Do you believe that the effect of the Moritz</p> <p>8 property could actually be measured at the receiving</p> <p>9 body of water?</p> <p>10 MR. LEON: Vague as to which receiving body</p> <p>11 of water.</p> <p>12 THE WITNESS: Yes, it could be measured.</p> <p>13 BY MR. SIMPSON:</p> <p>14 Q How would you do that?</p> <p>15 A With a turbidity meter, if turbidity is the</p> <p>16 constituent you're talking about. If it was a pH, maybe</p> <p>17 a pH meter.</p> <p>18 Q Any idea of the sensitivity of such meters?</p> <p>19 A It depends on how much money you're willing</p> <p>20 to spend on the meter.</p> <p>21 Q Do you know how many thousands of acres are</p> <p>22 in the watershed that leads to the lagoon that you've</p> <p>23 mentioned?</p> <p>24 A No.</p> <p>25 Q Do you know whether that exceeds a thousand</p>	<p style="text-align: center;">80</p> <p>1 correct?</p> <p>2 A The stream -- the ephemeral stream is given</p> <p>3 beneficial uses through our basin plan of warm --</p> <p>4 which -- how do I say this. There's the potential that</p> <p>5 there could be aquatic species in there at the time that</p> <p>6 water is flowing through the stream and that it could</p> <p>7 help move these down to a more permanent -- not</p> <p>8 permanent, but a larger stream. There's the possibility</p> <p>9 that aquatic species can travel through the ephemeral</p> <p>10 stream.</p> <p>11 Q So it's speculative here, but based on</p> <p>12 experience at other ephemeral streams?</p> <p>13 A It's speculative here because I don't know</p> <p>14 except from photographs what the stream looked like</p> <p>15 prior to Dr. Moritz's activities.</p> <p>16 Q I'm going to hand you what I've marked as</p> <p>17 Exhibit 62. And that's -- well, you tell me what that</p> <p>18 is. And I'm sorry. I only have one copy at the moment.</p> <p>19 A That's an application for a stream bed</p> <p>20 alteration agreement from the California Department of</p> <p>21 Fish and Game.</p> <p>22 (Exhibit 62 marked)</p> <p>23 BY MR. SIMPSON:</p> <p>24 Q Now, the last four or five pages there, or</p> <p>25 toward the end anyway, have a written description of</p>

<p style="text-align: center;">81</p> <p>1 events. Do you see that?</p> <p>2 A Yes.</p> <p>3 Q In earlier testimony you testified about some</p> <p>4 of the things that Dr. Moritz mentioned to you. Is that</p> <p>5 notification of stream bed alteration a document he</p> <p>6 provided you with?</p> <p>7 A He did not provide me with this.</p> <p>8 Q Did Kelly Fisher provide you with that?</p> <p>9 A At some point, yes.</p> <p>10 Q Was that in approximately June or July of</p> <p>11 2008?</p> <p>12 A Yes.</p> <p>13 Q Was it after the cleanup and abatement order,</p> <p>14 original cleanup and abatement order had issued?</p> <p>15 A I don't recall.</p> <p>16 Q The date of that is May 14, 2008. Do you see</p> <p>17 that?</p> <p>18 A Yes.</p> <p>19 Q Is it your understanding from having spoken</p> <p>20 with Kelly Fisher or from having communicated with Bill</p> <p>21 Moritz that he attempted to get permission to alter the</p> <p>22 stream bed?</p> <p>23 A I am aware that he submitted this application</p> <p>24 with a check to the fish -- Department of Fish and Game.</p> <p>25 Q Did he ever tell you that he understood he</p>	<p style="text-align: center;">83</p> <p>1 Department of Fish and Game had approved the requested</p> <p>2 stream bed alteration?</p> <p>3 A Yes.</p> <p>4 Q What did she say?</p> <p>5 A She had not.</p> <p>6 Q Did she say anything about what her next</p> <p>7 steps were as far as that plan is concerned?</p> <p>8 A That exhibit right there you're referring to?</p> <p>9 Q Yes.</p> <p>10 A I believe that she wrote back to him saying</p> <p>11 it was incomplete.</p> <p>12 Q Do you know whether that was before or after</p> <p>13 the pipe went in?</p> <p>14 A I would say it was after.</p> <p>15 Q Do you know whether there was some event that</p> <p>16 led Bill Moritz to believe that he had the authority to</p> <p>17 put the pipe in?</p> <p>18 A I know what his and your written evidence</p> <p>19 states, he -- I know the circumstances surrounding, yes.</p> <p>20 Q Is it your understanding that he believed</p> <p>21 when told to fix the problem on May 19, 2008, that he</p> <p>22 understood that to mean that he must get that pipe in?</p> <p>23 A That's what he has alleged. I can't know</p> <p>24 what was in his mind.</p> <p>25 Q Item No. 8 of Exhibit 60, if I could refer</p>
<p style="text-align: center;">82</p> <p>1 had the permission of the Department of Fish and Game to</p> <p>2 proceed with the work?</p> <p>3 A I believe in some of his or Mr. Sandrock's</p> <p>4 written and your written correspondence that yes, he has</p> <p>5 stated that he thought he had permission.</p> <p>6 Q Have you seen notification of stream bed</p> <p>7 alterations in the past?</p> <p>8 A Yes.</p> <p>9 Q Do they tend to look like Exhibit 62 or</p> <p>10 something different?</p> <p>11 A The form is similar. I don't know if they've</p> <p>12 changed it lately. But yeah, that's the form that</p> <p>13 people fill out when they want to obtain a stream bed</p> <p>14 alteration agreement.</p> <p>15 Q When you've seen stream bed alteration</p> <p>16 agreements and notification of stream bed alterations,</p> <p>17 have you -- have they looked more detailed than you see</p> <p>18 in Exhibit 62?</p> <p>19 A Some have. Some not. It's dependent on the</p> <p>20 complexity of the project being proposed.</p> <p>21 Q How complex would you view this particular</p> <p>22 stream bed alteration proposal to be as compared to</p> <p>23 others in general?</p> <p>24 A Not very complex.</p> <p>25 Q Did you talk to Kelly Fisher about whether</p>	<p style="text-align: center;">84</p> <p>1 you back to that cleanup and abatement order that's</p> <p>2 proposed, that mentions violation of discharge</p> <p>3 prohibitions in the water quality control plan for the</p> <p>4 basin plan. Do you see that?</p> <p>5 A Yes.</p> <p>6 Q And as I understand it, you've got three</p> <p>7 concerns, and those are items numbered 1, 3 and 14 under</p> <p>8 section 8?</p> <p>9 A Yes.</p> <p>10 Q I'm going to hand you what has been marked as</p> <p>11 Exhibit 63, which contains some highlighting to try to</p> <p>12 make this go a little bit more quickly.</p> <p>13 Other than the highlighting, do you recognize</p> <p>14 this as excerpts of the basin plan, and particularly</p> <p>15 Chapter 3, Water Quality Objectives, of the basin plan?</p> <p>16 A Yes.</p> <p>17 (Exhibit 63 marked)</p> <p>18 BY MR. SIMPSON:</p> <p>19 Q You'll note that this is not a complete copy</p> <p>20 of that chapter, but rather select pages.</p> <p>21 A Mm-hmm.</p> <p>22 Q Is the chart that's about four or five pages</p> <p>23 back, the chart for surface water, water quality</p> <p>24 objectives, for my client's property?</p> <p>25 A Yes.</p>

<p style="text-align: center;">85</p> <p>1 Q And we know that because it's hydrological</p> <p>2 unit basin No. 6.20?</p> <p>3 A Correct.</p> <p>4 Q Now, there are temporary exceedances that are</p> <p>5 allowed from these particular numbers that are in the</p> <p>6 table, correct?</p> <p>7 A Yes. Concentrations not to be exceeded more</p> <p>8 than 10 percent of the time during any one-year period.</p> <p>9 Q As we sit here today, does the regional board</p> <p>10 have any evidence that there were any exceedances of any</p> <p>11 of these constituents of concern or these water quality</p> <p>12 objectives, rather, at any time?</p> <p>13 A Not that I -- not that I know of.</p> <p>14 Q The next table in order, Table 3.3 of</p> <p>15 Exhibit 63, refers to ground water. Do you see that</p> <p>16 table?</p> <p>17 A Yes.</p> <p>18 Q Does the regional board have ground water</p> <p>19 concerns as regards my client's property, or is it</p> <p>20 surface water only?</p> <p>21 A I don't know.</p> <p>22 Q How about you as an enforcement officer for</p> <p>23 the Regional Water Quality Control Board? Do you have</p> <p>24 concerns about whether my client's property is affecting</p> <p>25 ground water?</p>	<p style="text-align: center;">87</p> <p>1 A I would say that the natural sediment load</p> <p>2 that could have been taken from your client's property,</p> <p>3 distributed downstream, was removed when he encased the</p> <p>4 stream -- well, when he diverted the drainage on his</p> <p>5 property through a pipe. There's also the potential of</p> <p>6 the sediment load going way over the natural sediment</p> <p>7 load than existed in the stream prior to impact due to</p> <p>8 the amounts of fill that were imported into the property</p> <p>9 and the potential for them to erode and discharge into</p> <p>10 downstream water bodies.</p> <p>11 Q As you sit here today, do you have any</p> <p>12 evidence that that occurred?</p> <p>13 A Anecdotal evidence.</p> <p>14 Q From whom?</p> <p>15 A From the complaint issued by the city of</p> <p>16 Poway.</p> <p>17 Q Is the complaint issued by the city of Poway</p> <p>18 something that Danis Bechter gave to you?</p> <p>19 A I believe Lisa Foster gave it to me.</p> <p>20 Q Do you know one way or another whether those</p> <p>21 are true, or do you accept them as true?</p> <p>22 A I accept them as true.</p> <p>23 Q Have you ever seen Bill Moritz's</p> <p>24 cross-complaint?</p> <p>25 A No.</p>
<p style="text-align: center;">86</p> <p>1 A I'm not sure where the water table resides on</p> <p>2 your client's property. I'm not sure what kind of</p> <p>3 aquifer, if any, or storage capacity is available</p> <p>4 underneath the ground on your client's property. There</p> <p>5 is a potential that the removal of the stream and</p> <p>6 placement of a pipe could potentially affect ground</p> <p>7 water recharge.</p> <p>8 Q As we sit here today, does the regional board</p> <p>9 or you, as its enforcement officer, have any concerns</p> <p>10 about the effect of ground water given what's occurred</p> <p>11 on my client's property?</p> <p>12 A I don't know.</p> <p>13 Q Is there anyone at the regional board, to</p> <p>14 your knowledge, that knows more about the effects of my</p> <p>15 client and his property as far as it affects water</p> <p>16 quality, other than you?</p> <p>17 A Potentially.</p> <p>18 Q Who knows more -- do you think might know --</p> <p>19 who do you think might know more than you?</p> <p>20 A About water quality?</p> <p>21 Q At my client's site.</p> <p>22 A I don't know.</p> <p>23 Q Do you or the regional board have any</p> <p>24 evidence as to whether the sediment load was changed by</p> <p>25 any of my client's conduct?</p>	<p style="text-align: center;">88</p> <p>1 Q Do you know today whether the site is</p> <p>2 stabilized as far as erosion control and sediment</p> <p>3 control is concerned?</p> <p>4 A From the photographs I've seen of the</p> <p>5 abatement work that was performed by the city of Poway,</p> <p>6 so far to date those BMPs seem to be preventing erosion</p> <p>7 and discharge of sediment off-site from your client's</p> <p>8 property.</p> <p>9 Q Is it your understanding the city of Poway</p> <p>10 under that clean -- or under an abatement order --</p> <p>11 strike that.</p> <p>12 Is it your understanding that the city of</p> <p>13 Poway, under an abatement warrant, went in and installed</p> <p>14 some BMPs?</p> <p>15 A Yes.</p> <p>16 Q What did you understand they did?</p> <p>17 MR. LEON: Excuse me. Before you get too</p> <p>18 much into it, I just want to check things out about how</p> <p>19 you're feeling.</p> <p>20 MR. SIMPSON: Lunchtime? Why don't we go</p> <p>21 ahead and take a break.</p> <p>22 THE WITNESS: Yeah. I could use a break.</p> <p>23 MS. FOSTER: How long are we going to take?</p> <p>24 I'm hoping short so we can keep going.</p> <p>25 THE WITNESS: A half hour?</p>

<p style="text-align: center;">89</p> <p>1 MR. SIMPSON: How about 45 minutes because, 2 practically speaking, it will be 45 minutes anyway. 3 MR. LEON: It's 12:30 now, so back at 1:15. 4 * * * 5 (LUNCHEON RECESS) 6 * * * 7 8 EXAMINATION CONTINUED 9 BY MR. SIMPSON: 10 Q Sir, I'm going to hand you what is apparently 11 an e-mail, and it's from your file. It looks like 12 Exhibit 64 is next. Do you see Exhibit 64? 13 A Yes. 14 (Exhibit 64 marked) 15 BY MR. SIMPSON: 16 Q And you recognize that as something from the 17 RWQCB file? 18 A Yes. 19 Q You know that because of the highlighter? 20 A Yes. 21 Q Is this something that you got or you saw 22 before? 23 A Yes. It's an e-mail that I wrote, so I'm 24 familiar with it. 25 Q Take a moment, if you would, and familiarize</p>	<p style="text-align: center;">91</p> <p>1 e-mail address on our web site would be received. 2 Q Do you know one way or the other? 3 A I don't. 4 Q I'm going to show you Exhibit 66. 5 MR. LEON: Was there a 65? 6 MS. FOSTER: The last one was 64. 7 MR. SIMPSON: I'm sorry. 8 Q What I'm handing you, then, I'll mark as 9 Exhibit 65. I'll take that back and use that one next. 10 Is what I've just handed you as Exhibit 65 the document 11 that you understood that Bill Moritz believed that he 12 had sent earlier? 13 A Yes. 14 (Exhibit 65 marked) 15 BY MR. SIMPSON: 16 Q And this is an e-mail that discusses his 17 understanding that he had the authority to do contour 18 grading and landscape work? 19 MR. LEON: Objection. Just a little 20 difficulty with respect to the document. You call it an 21 e-mail, but it looks like something other than an 22 e-mail. For example, a Word document. Can you tell us 23 why that is? Or do you have anything that you need to 24 do to clarify the record on that? 25 MR. SIMPSON: Yeah.</p>
<p style="text-align: center;">90</p> <p>1 yourself with it. I've got questions about an e-mail 2 that Bill Moritz sent or didn't send to regional board. 3 A (Nods head.) 4 Q Are you aware of an issue between -- I want 5 to say between you and Bill Moritz as to whether he had 6 sent Mike McCann an e-mail earlier than this? 7 A I corresponded with Dr. Moritz regarding the 8 e-mail that he sent -- he said he sent to a Mike at the 9 regional board. 10 Q Did you ever get to the bottom of that? 11 A I attempted to find out if either of the 12 staff members named Mike at our regional board ever 13 received the e-mail in question. 14 Q And what did they say? 15 A Neither Mike McCann nor Michael Porter had 16 any recollection of ever receiving the e-mail. They 17 both checked their e-mail accounts and showed no sign of 18 it having been sent in the time frame he said it was 19 sent. 20 Q Do you guys have a filtering system that 21 filters out e-mails? 22 A I don't know. 23 Q Do you know whether all e-mails that are sent 24 to you are always received? 25 A I would assume that e-mails sent through an</p>	<p style="text-align: center;">92</p> <p>1 Q Let me hand you Exhibit 66, and maybe that 2 will help shed light on that. 3 MR. LEON: Thank you. 4 (Exhibit 66 marked) 5 BY MR. SIMPSON: 6 Q Take a moment, if you would, and look at 66 7 in conjunction with 65. 8 Have you had a moment to look -- 9 A Yes. 10 Q -- at Exhibit 66? 11 A Yes. 12 Q Is it your understanding that he believed he 13 sent you an e-mail that is -- the contents of which are 14 contained in Exhibit 65? 15 A Yes. 16 Q And Exhibit 65, of course, is a Word document 17 but not an e-mail, but that's an attachment that he had 18 sent to you? 19 A Yes. 20 Q Given that, is it your understanding that 21 Bill Moritz believed that he had the authority to do 22 grading and landscaping on his property? 23 MR. LEON: I'm going to object that it calls 24 for speculation about what Mr. Moritz's state of mind is 25 or was at that time.</p>

<p style="text-align: center;">93</p> <p>1 THE WITNESS: Can you repeat the question, 2 please? 3 BY MR. SIMPSON: 4 Q Is it your understanding that Bill Moritz 5 told you that he had the authority of the city of Poway 6 to do contour grading and landscaping? 7 A That's what he states in the letter. 8 Q He also mentions that he believed that he had 9 the authority of a Department of Fish and Game warden to 10 proceed with the work that he was doing as of the time 11 the game warden appeared on his property, right? 12 A That's what the letter seems to indicate. 13 Q Did you ever contact the Department of Fish 14 and Game warden? 15 A No. 16 Q Why not? 17 A I didn't feel there was any need to. 18 Q Would it make a difference to you if the 19 Department of Fish and Game warden said that putting a 20 pipe in the stream was okay? 21 A No. 22 Q Why not? 23 A Because in my estimation the warden would be 24 wrong. 25 Q And you'd still have water code provisions to</p>	<p style="text-align: center;">95</p> <p>1 Q Do you have any understanding as to whether 2 those conditional waivers were created as a consequence 3 of a directive from the governor? 4 A Yes. 5 Q Is it your understanding that those 6 conditional waivers were created as part of the 7 governor's effort to suspend certain requirements for 8 obtaining WDRs, for example? 9 A Could you repeat the question, please? 10 MR. SIMPSON: Could you do me that favor? 11 (Record read) 12 THE WITNESS: Yes. 13 BY MR. SIMPSON: 14 Q I'm going to hand you Exhibit 67. On Page 3, 15 No. 13, is that the provision by which you believe the 16 governor suspended certain requirements regarding WDRs 17 temporarily as a result of the Witch Creek fires? 18 A I'll have to read the document to get context 19 here. 20 (Exhibit 67 marked) 21 MR. LEON: Counsel, I'm going to ask you a 22 question about this document. Obviously it is what it 23 is, and it probably will lead to a line of questioning 24 that is more along the lines of legal interpretation, 25 perhaps policy interpretation. Obviously, Mr. Means</p>
<p style="text-align: center;">94</p> <p>1 enforce? 2 A There would still be permits required from 3 the Department of Fish and Game, from the city of Poway, 4 and potentially the Army Corps of Engineers. 5 Q Likewise, if Bill Moritz had the authority 6 for performing the work that he had through the city of 7 Poway, would you believe that that still doesn't relieve 8 him of obligations under the water code to the Regional 9 Water Quality Control Board? 10 A Yes. 11 Q Because he still needs the permits that he 12 would get through you guys, correct? 13 A Right. 14 Q And that would include WDRs? 15 A WDRs or Section 401 water quality 16 certification. 17 Q Was there a time after the Witch Creek fires 18 that the requirements for obtaining WDRs were suspended? 19 A Not exactly. 20 Q What do you mean by "not exactly"? 21 A I know that the regional board, after the 22 Witch Creek fires, issued conditional waivers for fire 23 related activities that may result in a discharge to 24 isolated waters of the state, not under the jurisdiction 25 of the federal government.</p>	<p style="text-align: center;">96</p> <p>1 will have information factually with respect to what the 2 office's protocol may have developed as a result of the 3 issuance of this document, but he probably won't have a 4 lot of information, I'm just guessing, with respect to 5 what transpired with respect to implementation from the 6 governor's office on down to manager. 7 MR. SIMPSON: I don't have a lot of questions 8 in here, but we can see where it goes. 9 MR. LEON: All right. 10 THE WITNESS: Could you repeat the question 11 again? 12 BY MR. SIMPSON: 13 Q Is it your understanding that paragraph 13 is 14 the paragraph by which the governor suspended 15 requirements for such things as WDRs? 16 A I don't know. 17 Q I'm going to show you two documents, 18 Exhibit 68, which is an Executive Officer Summary Report 19 dated November 14, 2007, and Exhibit 69, which is a 20 Tentative Resolution R9-2007-0211. Take a moment, if 21 you would, to familiarize yourself with those. And I'm 22 going to ask some fairly broad questions. 23 (Exhibits 68 and 69 marked) 24 BY MR. SIMPSON: 25 Q Have you had the chance to look at those?</p>

<p style="text-align: center;">97</p> <p>1 A Yes.</p> <p>2 Q Do you believe that Exhibits 68 and 69 are</p> <p>3 the San Diego Regional Water Quality Control Board's</p> <p>4 method of implementing conditional waivers because of</p> <p>5 the Witch Creek fires?</p> <p>6 A Yes.</p> <p>7 Q And I'll hand you Exhibits 70 and 71 as well.</p> <p>8 Exhibit 70 --</p> <p>9 THE REPORTER: Excuse me. Could we go off</p> <p>10 the record?</p> <p>11 (Off the record)</p> <p>12 (Exhibits 70 and 71 marked)</p> <p>13 BY MR. SIMPSON:</p> <p>14 Q Back on the record.</p> <p>15 Sir, Exhibits 70 and 71, are they part of the</p> <p>16 effort of the regional board to implement the directive</p> <p>17 of the governor to suspend WDRs?</p> <p>18 A I am not familiar with document 71, but I</p> <p>19 have no reason to believe that they aren't.</p> <p>20 Q Do you have any understanding about the</p> <p>21 period during which WDRs were suspended because of the</p> <p>22 Witch Creek fires?</p> <p>23 A Yes.</p> <p>24 Q What period?</p> <p>25 A During -- as soon as the governor issued his</p>	<p style="text-align: center;">99</p> <p>1 waiver under this resolution.</p> <p>2 BY MR. SIMPSON:</p> <p>3 Q Why do you believe that he would not qualify?</p> <p>4 A If you look at Page 6 of Exhibit 69, 6C,</p> <p>5 which states "specific actions necessary to prevent or</p> <p>6 mitigate an emergency. This does not include long-term</p> <p>7 projects undertaken for the purpose of preventing or</p> <p>8 mitigating a situation that has a low probability of</p> <p>9 occurrence in the short-term." In my mind, though I'm</p> <p>10 not a lawyer, the project that Dr. Moritz did on his</p> <p>11 project --</p> <p>12 MS. FOSTER: I'm sorry. Ours are not</p> <p>13 numbered, and so I'm not sure which document we're</p> <p>14 talking about here.</p> <p>15 THE WITNESS: That would be tentative</p> <p>16 resolution R9-2007-0211.</p> <p>17 MR. LEON: And what part are you reading</p> <p>18 from?</p> <p>19 THE WITNESS: I'm reading from the general</p> <p>20 conditions, Section A, 6C.</p> <p>21 MR. LEON: Thank you.</p> <p>22 BY MR. SIMPSON:</p> <p>23 Q You're talking about CEQA requirements,</p> <p>24 right?</p> <p>25 A No. I'm talking about the fact that</p>
<p style="text-align: center;">98</p> <p>1 emergency proclamation, which was -- or executive order,</p> <p>2 No. 67.</p> <p>3 Q And for how long were they suspended?</p> <p>4 A I don't know.</p> <p>5 Q Did you ever talk with Bill Moritz about the</p> <p>6 possibility of his property not having WDRs issued</p> <p>7 because his property might qualify for the temporary</p> <p>8 allowance to not have WDRs?</p> <p>9 A No.</p> <p>10 Q Do you believe that his property did not ever</p> <p>11 qualify for the relief that the governor proposed?</p> <p>12 MR. LEON: Objection. Calls for speculation.</p> <p>13 Calls for a legal conclusion. Relevance is an issue</p> <p>14 with respect to whether this applies, and a foundation</p> <p>15 hasn't been laid with respect to whether Mr. Moritz ever</p> <p>16 applied for a conditional permit under these</p> <p>17 resolutions.</p> <p>18 THE WITNESS: I am not familiar with the</p> <p>19 resolution contained or discussed in Exhibit 71. I have</p> <p>20 read through once the resolution contained in</p> <p>21 Exhibit 69. And my reading of the tentative resolution</p> <p>22 number R9-2007-0211, I would -- it would be my opinion</p> <p>23 that he would most likely not be eligible for inclusion</p> <p>24 under this conditional waiver. And I know of no other</p> <p>25 project that was done like Dr. Moritz's that obtained a</p>	<p style="text-align: center;">100</p> <p>1 Dr. Moritz was doing improvements to his property that</p> <p>2 he stated so himself, he wanted to, you know, landscape,</p> <p>3 make -- get better use out of his property. And in my</p> <p>4 mind, that's a long-term project that doesn't allow for</p> <p>5 a conditional waiver.</p> <p>6 Q Dr. Moritz told you, didn't he, that after</p> <p>7 the Witch Creek fires there was a deluge of water that</p> <p>8 came down from a dam that broke or was taken down</p> <p>9 upgradient?</p> <p>10 A Yes.</p> <p>11 Q And he told you that trash and sediment and</p> <p>12 debris ended up on his property?</p> <p>13 A No.</p> <p>14 Q Did he tell you that because of the winter</p> <p>15 rains following the Witch Creek fires that he had</p> <p>16 sedimentation and also scouring on his property and deep</p> <p>17 gullies and erosion rills on his property?</p> <p>18 A Yes.</p> <p>19 Q Now, getting back to Exhibit 67, Item No. 13,</p> <p>20 one of the things that the governor was requiring to be</p> <p>21 suspended was regulations, rules, statutes pertaining to</p> <p>22 restoration, right?</p> <p>23 A I don't know.</p> <p>24 Q Well, it says that restoration and related</p> <p>25 activities, those statutes, rules are suspended, right?</p>

<p style="text-align: center;">101</p> <p>1 A Are you talking about No. 13?</p> <p>2 Q Yes.</p> <p>3 MR. LEON: Objection. Argumentative. The</p> <p>4 document speaks for itself. I don't know what purpose</p> <p>5 it serves to have the witness repeat what the document</p> <p>6 says.</p> <p>7 THE WITNESS: It does say that statutes,</p> <p>8 rules, regulations and the requirements are suspended</p> <p>9 only to the extent necessary for expediting the removal</p> <p>10 and cleanup of debris from the disaster and for</p> <p>11 implementing any restoration plan.</p> <p>12 BY MR. SIMPSON:</p> <p>13 Q And related activities, right?</p> <p>14 A I didn't see that.</p> <p>15 Q Have you had any experience in 13269, water</p> <p>16 code waivers from waste discharge requirements?</p> <p>17 A No.</p> <p>18 Q Have you ever heard of temporary waivers</p> <p>19 being given to folks to whom WDRs might apply under</p> <p>20 13269?</p> <p>21 A No.</p> <p>22 Q Do you know that that possibility exists?</p> <p>23 A Perhaps. I'm not sure. I'm not familiar</p> <p>24 with the text of 13269.</p> <p>25 Q Are you generally familiar with the</p>	<p style="text-align: center;">103</p> <p>1 A Yes.</p> <p>2 (Exhibit 72 marked)</p> <p>3 BY MR. SIMPSON:</p> <p>4 Q And did you read that in approximately the</p> <p>5 June 2008 time frame?</p> <p>6 A Yes.</p> <p>7 MS. FOSTER: Can I see what document we are</p> <p>8 talking about?</p> <p>9 MR. SIMPSON: Yeah. Sorry. I don't have an</p> <p>10 extra copy of it. I think you've seen it before as</p> <p>11 well.</p> <p>12 MS. FOSTER: Probably so.</p> <p>13 BY MR. SIMPSON:</p> <p>14 Q Sir, I'm going to hand you what I've marked</p> <p>15 as Exhibit 73. Do you recognize that as Page 4 hyphen</p> <p>16 24 of the basin plan?</p> <p>17 A Yes.</p> <p>18 (Exhibit 73 marked)</p> <p>19 BY MR. SIMPSON:</p> <p>20 Q The --</p> <p>21 A I can't say for sure that this is the exact</p> <p>22 page from the basin plan. It looks like it.</p> <p>23 Q The highlighted portion there talks about</p> <p>24 selection of appropriate enforcement action. Do you see</p> <p>25 that?</p>
<p style="text-align: center;">102</p> <p>1 possibility of conditional -- or of waivers, temporary</p> <p>2 waivers, from the WDRs?</p> <p>3 A Yes.</p> <p>4 Q You're familiar with that being 13269. You</p> <p>5 just aren't familiar with the content of it as you sit</p> <p>6 here today?</p> <p>7 A Right.</p> <p>8 Q You've seen the city of Poway's complaint,</p> <p>9 right?</p> <p>10 A I have seen a copy of it, yes. I believe</p> <p>11 it's part of the evidence package that I supplied you.</p> <p>12 Q And is it your understanding that the city of</p> <p>13 Poway was demanding of the Moritzes that they restore</p> <p>14 the stream just like the RWQCB?</p> <p>15 A I would have to refresh my memory looking at</p> <p>16 the complaint.</p> <p>17 Q What is your understanding of what they are</p> <p>18 requiring of the Moritzes?</p> <p>19 A I would say their requirements are in line</p> <p>20 with regional board's requirements; to remove the fill,</p> <p>21 remove the pipe, and restore the stream in line with the</p> <p>22 restoration plan that Dr. Moritz developed.</p> <p>23 Q Sir, I'm going to hand you Exhibit 72. Do</p> <p>24 you recognize that as something that Dr. Moritz provided</p> <p>25 to you?</p>	<p style="text-align: center;">104</p> <p>1 A Yes.</p> <p>2 Q Were you trained to go through these steps</p> <p>3 before selecting an appropriate enforcement action?</p> <p>4 A I have had enforcement training, but not on</p> <p>5 this particular page of the basin plan.</p> <p>6 Q Now the basin plan is what the regional board</p> <p>7 of San Diego prescribes for itself, right?</p> <p>8 A Yes. We developed it.</p> <p>9 Q And staff proposes orders such as cleanup and</p> <p>10 abatement orders such as the cleanup and abatement order</p> <p>11 2008-152 in this case, right?</p> <p>12 A Yes.</p> <p>13 Q And then, if adopted, it becomes an order of</p> <p>14 the board.</p> <p>15 A Yes.</p> <p>16 Q Has the regional board, looking at the first</p> <p>17 bullet point, gathered evidence concerning the degree of</p> <p>18 water quality impairment involving the Moritz property?</p> <p>19 A To the extent that it's necessary for this</p> <p>20 action, yes.</p> <p>21 Q What is the evidence concerning the degree of</p> <p>22 water quality impairment?</p> <p>23 A There once was a stream on the site that had</p> <p>24 beneficial uses and hydrological and ecological</p> <p>25 functions, and it's gone.</p>

<p style="text-align: center;">105</p> <p>1 Q Okay. And how about the threat to the public 2 health, including the degree of toxicity of the 3 discharge? What evidence does it have in those regards? 4 Same thing?</p> <p>5 A In the case of discharge fill to a stream, I 6 have no evidence -- I do not know where Dr. Moritz got 7 his fill from, so I don't know whether or not it's toxic 8 fill or not. I have no way to know that.</p> <p>9 Q No evidence as you sit here today, correct?</p> <p>10 A I have no idea of there being a toxicity 11 threat from his discharge, other than the potential of 12 sediment to be discharged into the neighboring streams 13 and to detrimentally affect organisms living in that 14 stream by smothering them.</p> <p>15 Q How about the next bullet point, past history 16 of discharge violations? As far as RWQCB is concerned, 17 have there been any RWQCB violations by Dr. Moritz an 18 any point before the June, or was it July, cleanup and 19 abatement order and 2008?</p> <p>20 A I'm unaware of any.</p> <p>21 Q How about other discharge violations?</p> <p>22 A Not that I know of.</p> <p>23 Q How about the next item, the degree of 24 cooperation or recalcitrance shown by the discharger? 25 What are your thoughts on that? Has Dr. Moritz been</p>	<p style="text-align: center;">107</p> <p>1 double negative.</p> <p>2 A Oh. Excuse me. That's correct.</p> <p>3 Q That was a bad question.</p> <p>4 How about the next bullet point? Does the 5 regional board have any evidence as to the financial 6 resources of Bill Moritz or Lori Moritz?</p> <p>7 A Yes.</p> <p>8 Q What evidence does it have?</p> <p>9 A What you have provided. And in regards to 10 costs of creating the plan, though I've never seen an 11 invoice that proves that, I have -- and you've also 12 stated what you expect, or a bid you've had for what it 13 would cost to do the actual restoration work.</p> <p>14 Q So at this point it has no actual dollar 15 costs for what it would cost to do the work, correct?</p> <p>16 MR. LEON: Asked and answered.</p> <p>17 THE WITNESS: I believe you stated in a 18 letter or correspondence to me that it would cost 19 \$60,000.</p> <p>20 BY MR. SIMPSON:</p> <p>21 Q Do you have any information about the 22 financial ability of the Moritzes?</p> <p>23 A I do not.</p> <p>24 Q Does anybody within the RWQCB?</p> <p>25 A I don't know.</p>
<p style="text-align: center;">106</p> <p>1 cooperative or uncooperative?</p> <p>2 A In my opinion, Dr. Moritz was cooperative up 3 to a point, and then he ceased being cooperative.</p> <p>4 Q At what point did he cease cooperation?</p> <p>5 A At the point where he actually -- after the 6 plan -- he complied with the original cleanup and 7 abatement order to the point of creating a restoration 8 plan to restore the creek, he provided us a time line 9 with which he said he could comply with the order and 10 restore the creek, and at the point where he needed to 11 start the work, he backed away from his stated 12 willingness to comply with the order. And he also did 13 not follow through with getting grading permits from the 14 city or obtaining a stream bed alteration agreement. 15 Though he did submit an application, he's never 16 concluded the process of getting a stream bed alteration 17 agreement.</p> <p>18 Q Do you know why he cooperated to a point and 19 then ceased?</p> <p>20 A I only know what you provided me in your 21 letter to me as for his reasons.</p> <p>22 Q You haven't contacted him to ask him why he's 23 not proceeding with the plan, right?</p> <p>24 A No.</p> <p>25 Q And by that you mean that's correct? I had a</p>	<p style="text-align: center;">108</p> <p>1 MR. LEON: That was an incomplete question. 2 Are we assuming that the question was does anybody 3 within the water board have information about 4 Dr. Moritz's economic ability? Financial resources?</p> <p>5 BY MR. SIMPSON:</p> <p>6 Q Financial resources. That's a better 7 question. Are you aware of whether anybody in the RWQCB 8 has information about the financial resources of Bill or 9 Lori Moritz and their ability to do the work that was 10 contemplated in the stream restoration plan?</p> <p>11 A The only financial information -- could you 12 repeat the question one more time, please?</p> <p>13 Q Are you aware of whether anybody in the RWQCB 14 has any information about Bill or Lori Moritz's 15 financial resources and ability to implement the stream 16 restoration work?</p> <p>17 A Other than myself, no.</p> <p>18 Q There's another item here, a couple bullet 19 points down -- well, I guess the next bullet point on 20 Exhibit 73 is whether the circumstances leading to the 21 noncompliance have been corrected. As of today, has 22 there been a partial correction of some of the 23 circumstances leading to the cleanup and abatement 24 order?</p> <p>25 A No.</p>

<p style="text-align: center;">109</p> <p>1 Q Let me show you if I can Exhibit 74. Maybe</p> <p>2 that's not the best picture. Do you recognize the</p> <p>3 Moritz property within Exhibit 74?</p> <p>4 A Yes.</p> <p>5 (Exhibit 74 marked)</p> <p>6 BY MR. SIMPSON:</p> <p>7 Q Do you see an arrangement of straw rolls that</p> <p>8 were called out in the stream restoration plan?</p> <p>9 A I see straw wattles. I can't tell you if</p> <p>10 they are deployed in the way that the stream restoration</p> <p>11 plan envisioned.</p> <p>12 Q Do you have that figure in front of you, the</p> <p>13 stream restoration plan we went over earlier?</p> <p>14 MR. LEON: Exhibit 61.</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MR. SIMPSON:</p> <p>17 Q Can you look at one and then the other and</p> <p>18 compare and get an idea whether the straw rolls shown in</p> <p>19 Exhibit 74 are deployed in the way called for in</p> <p>20 Exhibit 61?</p> <p>21 A Similar, but not exactly.</p> <p>22 Q Do you know why they might have departures in</p> <p>23 some locations?</p> <p>24 MR. LEON: Calls for speculation.</p> <p>25 THE WITNESS: No.</p>	<p style="text-align: center;">111</p> <p>1 Q Well, you made a determination of what was</p> <p>2 going on on the Moritz's property without having been</p> <p>3 there, right?</p> <p>4 A No.</p> <p>5 MR. LEON: Argumentative.</p> <p>6 BY MR. SIMPSON:</p> <p>7 Q Can you tell based on looking at this</p> <p>8 photograph whether there's grading that's occurring?</p> <p>9 A I can see -- it looks like someone's driven a</p> <p>10 tractor around there, yes.</p> <p>11 Q In fact, you can see the tractor on there,</p> <p>12 right?</p> <p>13 A I don't know if it's grading or tilling the</p> <p>14 soil or what the activity is. I don't know when this</p> <p>15 picture was taken. I could guess.</p> <p>16 Q This was actually, for reference,</p> <p>17 December 30, 2008.</p> <p>18 Can you tell, based on what you can see, that</p> <p>19 that looks like -- strike that.</p> <p>20 You didn't go out there in December, did you?</p> <p>21 A No.</p> <p>22 Q Are you aware of whether there's an ephemeral</p> <p>23 stream that intersects the -- or whether there are two</p> <p>24 connecting ephemeral streams on the neighbor's property</p> <p>25 upgradient of the Moritz property?</p>
<p style="text-align: center;">110</p> <p>1 BY MR. SIMPSON:</p> <p>2 Q Incidentally, on Exhibit 74, where is the</p> <p>3 dividing line on the property, if you know?</p> <p>4 A I would assume that in the middle of the</p> <p>5 diagram where the Visqueen channel starts is</p> <p>6 approximately where the property line is.</p> <p>7 Q And then off to the right there is a barn,</p> <p>8 and behind the barn is a cut slope with some more</p> <p>9 Visqueen plastic. Do you see that?</p> <p>10 A Yes.</p> <p>11 Q Is it your belief that the property line</p> <p>12 basically extends between those two end lines of</p> <p>13 Visqueen plastic?</p> <p>14 A Roughly, yes.</p> <p>15 Q The property to the north appears to be</p> <p>16 undergoing grading activities. Do you see that?</p> <p>17 A Yes.</p> <p>18 Q Is that something for which there is a</p> <p>19 permit?</p> <p>20 A I don't know.</p> <p>21 Q Based on what you see here, are you critical</p> <p>22 of the work that -- as an enforcement officer, that's</p> <p>23 being performed on the neighboring property?</p> <p>24 A I haven't been on the neighboring property,</p> <p>25 so I can't really make a determination.</p>	<p style="text-align: center;">112</p> <p>1 A Historically, yes.</p> <p>2 Q Where did it historically go? The area where</p> <p>3 the hay bales are shown on Exhibit 74?</p> <p>4 A In that direction generally, yes.</p> <p>5 Q Do you see those are hay bales and not straw</p> <p>6 rolls, right?</p> <p>7 A No, I did not.</p> <p>8 Q Can't tell?</p> <p>9 A Can't tell.</p> <p>10 Q Are hay bales an approved BMP?</p> <p>11 A Approved by who?</p> <p>12 Q Caltrans.</p> <p>13 A It's kind of -- I don't know if Caltrans's</p> <p>14 BMP manual still includes hay bales.</p> <p>15 Q Have you ever seen the condition of flowing</p> <p>16 water on the neighboring property during a rain event?</p> <p>17 A No.</p> <p>18 Q The pipe that was the -- or is the subject of</p> <p>19 your tentative cleanup and abatement order, are you</p> <p>20 aware of whether that's been partly removed?</p> <p>21 A Yes.</p> <p>22 Q Do you know where it has been partly removed?</p> <p>23 A No.</p> <p>24 Q Do you know what footage of its total length</p> <p>25 was removed?</p>

<p style="text-align: center;">113</p> <p>1 A No.</p> <p>2 Q Are you aware of whether it has been disabled</p> <p>3 so that it does not capture water and transmit water</p> <p>4 through it?</p> <p>5 A Yes.</p> <p>6 Q It has?</p> <p>7 A I believe so.</p> <p>8 Q If the pipe is disabled, do you believe that</p> <p>9 there's still a need to remove it?</p> <p>10 A That depends on the exact location of the</p> <p>11 pipe. If the pipe is in an area that was once waters of</p> <p>12 the state, yes, I believe the pipe should be removed.</p> <p>13 Q And you're referring to the historic stream</p> <p>14 bed?</p> <p>15 A Yes. I'm referring to the -- to the best of</p> <p>16 my knowledge, the topography that existed in 2005.</p> <p>17 Q I'm going to show you Exhibit 75, which is</p> <p>18 basically an overhead shot of the property, also taken</p> <p>19 on December 30 of 2008. Do you see the straw rolls</p> <p>20 there?</p> <p>21 A On Dr. Moritz's property?</p> <p>22 Q Yes.</p> <p>23 A Yes.</p> <p>24 (Exhibit 75 marked)</p> <p>25 ///</p>	<p style="text-align: center;">115</p> <p>1 BY MR. SIMPSON:</p> <p>2 Q Is that something that looked different when</p> <p>3 you first saw it in August of 2008?</p> <p>4 A Yes.</p> <p>5 Q Is this an improvement as far as the BMPs are</p> <p>6 concerned?</p> <p>7 A Yes.</p> <p>8 Q And this is before the city of Poway came</p> <p>9 onto the site, right?</p> <p>10 A I don't know.</p> <p>11 Q Do you know the date that the city of Poway</p> <p>12 performed its abatement work?</p> <p>13 A I don't remember the exact date.</p> <p>14 Q December?</p> <p>15 A Yes.</p> <p>16 Q Another thing that was mentioned while at the</p> <p>17 site in August was concerns about vectors within the</p> <p>18 drain that was depicted in the earlier exhibit. And the</p> <p>19 suggestion was that the bottom of the drain be filled</p> <p>20 with concrete so that there would not be standing water.</p> <p>21 Do you recall that conversation?</p> <p>22 A Yes.</p> <p>23 Q Exhibit 77 shows concrete having been poured</p> <p>24 in order to resolve that problem, right?</p> <p>25 MR. LEON: Can we go off the record for a</p>
<p style="text-align: center;">114</p> <p>1 BY MR. SIMPSON:</p> <p>2 Q Do you believe that the straw rolls are</p> <p>3 essentially in the location of the historic stream bed?</p> <p>4 A I believe no.</p> <p>5 Q Where do you believe the historic stream bed</p> <p>6 was in relation to any landmarks, such as the plastic</p> <p>7 creek or the straw rolls?</p> <p>8 A I would venture to guess that the Visqueen</p> <p>9 channel most closely represents where the original</p> <p>10 stream bed was.</p> <p>11 Q Do you know one way or the other?</p> <p>12 A I would need to superimpose other historical</p> <p>13 photographs on that to determine that.</p> <p>14 Q One of the things that you are requiring in</p> <p>15 the cleanup and abatement order is the protection of a</p> <p>16 drain; is that right?</p> <p>17 A That's not exactly right, no. It's not</p> <p>18 explicitly called out in the cleanup and abatement</p> <p>19 order.</p> <p>20 Q Since I showed you the picture, we might as</p> <p>21 well look at it. Are you aware if -- are you familiar</p> <p>22 with the drain that's shown in Exhibit 76?</p> <p>23 A Yes.</p> <p>24 (Exhibit 76 marked)</p> <p>25 ///</p>	<p style="text-align: center;">116</p> <p>1 moment, please?</p> <p>2 MR. SIMPSON: Sure.</p> <p>3 (Discussion off the record)</p> <p>4 MR. SIMPSON: 77 is the poured bottom in the</p> <p>5 drain, poured concrete bottom, for vector control.</p> <p>6 (Exhibit 77 marked)</p> <p>7 BY MR. SIMPSON:</p> <p>8 Q Exhibit 78 shows a couple of straw rolls near</p> <p>9 the barn. Do you see that?</p> <p>10 A Yes.</p> <p>11 (Exhibit 78 marked)</p> <p>12 BY MR. SIMPSON:</p> <p>13 Q And those weren't there in August, were they?</p> <p>14 A No.</p> <p>15 Q In August you counted three straw rolls?</p> <p>16 A Correct.</p> <p>17 Q Going back to the earlier exhibit, 75, what</p> <p>18 is the number of straw rolls that you can see in that</p> <p>19 photograph?</p> <p>20 MR. LEON: Could you hold up 75 so we can</p> <p>21 figure out which one it is?</p> <p>22 THE WITNESS: (Indicating.)</p> <p>23 MR. LEON: Thanks.</p> <p>24 THE WITNESS: At this elevation, it's</p> <p>25 difficult for me to see whether or not straw -- to</p>

<p style="text-align: center;">117</p> <p>1 discern between gravel bags and straw rolls as opposed</p> <p>2 to the channel and outside of the channel. If I count</p> <p>3 the number of fiber rolls I see outside of the channel,</p> <p>4 I count 10.</p> <p>5 BY MR. SIMPSON:</p> <p>6 Q And how many were called for in the stream</p> <p>7 restoration plan, Exhibit 61?</p> <p>8 A 10, 11 -- 12.</p> <p>9 Q Do you know whether straw rolls were removed</p> <p>10 as part of the abatement efforts by the city of Poway?</p> <p>11 A I do not.</p> <p>12 Q Do you recognize Sean Marsden's property in</p> <p>13 Exhibit 79?</p> <p>14 A That seems to look like his property.</p> <p>15 (Exhibit 79 marked)</p> <p>16 BY MR. SIMPSON:</p> <p>17 Q Did you see any sediment that you believed</p> <p>18 had come from the Moritz property on his property as</p> <p>19 of -- well, at any time?</p> <p>20 A No.</p> <p>21 Q I'm going to hand you Exhibit 81 and</p> <p>22 Exhibit 82, which is actually a portion of Exhibit 81,</p> <p>23 but blown up. Can you tell from looking at those two</p> <p>24 photographs what's going on there?</p> <p>25 A No.</p>	<p style="text-align: center;">119</p> <p>1 Q Does the RWQCB have any enforcement authority</p> <p>2 for preventing this kind of thing?</p> <p>3 MR. LEON: Lacks foundation with respect to</p> <p>4 whether that property owner obtained applicable permits</p> <p>5 from the city or the regional board or anybody else.</p> <p>6 THE WITNESS: Yeah. I'm not familiar with</p> <p>7 the property and I'm not familiar if he's received any</p> <p>8 permits or the -- from these aerials, I can't tell if</p> <p>9 any damage has been done to waters of the state. I'm</p> <p>10 not familiar with the property, so I can't say.</p> <p>11 BY MR. SIMPSON:</p> <p>12 Q Do you see the ephemeral stream that</p> <p>13 Dr. Moritz is being criticized for having changed in</p> <p>14 Exhibits 81 and 82?</p> <p>15 A I see where I imagine it could be an</p> <p>16 ephemeral stream running through the project.</p> <p>17 Q Do you know where the ephemeral stream runs</p> <p>18 on that neighboring property to the north?</p> <p>19 A I would say it generally bisects the property</p> <p>20 in half and running in a north to south --</p> <p>21 Q Toward the hay bales?</p> <p>22 A Probably right in the path of the hay bales.</p> <p>23 Q Are you aware of whether it actually cuts</p> <p>24 over toward the horse corrals shown in Exhibits 81 and</p> <p>25 82?</p>
<p style="text-align: center;">118</p> <p>1 (Exhibits 81 and 82 marked)</p> <p>2 BY MR. SIMPSON:</p> <p>3 Q Can you tell from looking at the tractor and</p> <p>4 the soil in front of and behind the tractor whether that</p> <p>5 tractor, as of the time of this photograph on</p> <p>6 December 30, 2008, was grading or tilling?</p> <p>7 A I can't tell if it's moving or if it's just</p> <p>8 parked there.</p> <p>9 Q Can you tell from the soils around it whether</p> <p>10 the ground looks as though it was freshly disturbed?</p> <p>11 A It looks like it's been tilled.</p> <p>12 Q Do you see any vegetation growing on the</p> <p>13 areas that were tilled?</p> <p>14 A Yes.</p> <p>15 Q Where do you see vegetation growing on the</p> <p>16 tilled areas?</p> <p>17 A The trees. The column of trees and the other</p> <p>18 tree.</p> <p>19 Q Not on the actual furrows of the tilled</p> <p>20 areas, though.</p> <p>21 A Yes.</p> <p>22 Q From the standpoint of the RWQCB, does the</p> <p>23 RWQCB care one way or another about this type of</p> <p>24 activity?</p> <p>25 A What do you mean, care?</p>	<p style="text-align: center;">120</p> <p>1 A I know that from looking at historical aerial</p> <p>2 photographs, there is a stream that runs about where the</p> <p>3 sand bales are, and there was another one that comes in</p> <p>4 from the south side and is now culverted under Crocker</p> <p>5 Road. Where they joined up, I can't exactly say. But</p> <p>6 two streams joined up into one on Dr. Moritz's property.</p> <p>7 Q Let me show you Exhibit 83. Do you recognize</p> <p>8 that as the culvert that goes beneath Crocker Road, to</p> <p>9 the neighboring property to the north?</p> <p>10 A I haven't walked up there and looked at it,</p> <p>11 so I can't say.</p> <p>12 (Exhibit 83 marked)</p> <p>13 BY MR. SIMPSON:</p> <p>14 Q Never been up there?</p> <p>15 A No. I've never been on the adjoining</p> <p>16 property, except when you and I looked at the inlet pipe</p> <p>17 portion.</p> <p>18 Q You've been on Crocker Road, right?</p> <p>19 A Yes.</p> <p>20 Q Likewise, with Exhibit 84 -- whoops. Let me</p> <p>21 trade you. That's a view the other direction of that</p> <p>22 same culvert and ephemeral stream. Can you tell one way</p> <p>23 or the other whether that's the ephemeral stream that</p> <p>24 leads to the Moritz property?</p> <p>25 A I can't tell from these photos.</p>

<p style="text-align: center;">121</p> <p>1 (Exhibit 84 marked)</p> <p>2 BY MR. SIMPSON:</p> <p>3 Q Now, assuming that it is the ephemeral stream</p> <p>4 that leads to the Moritz property, are you aware of</p> <p>5 having or intending to have Dr. Moritz restore his</p> <p>6 stream to something that looks like what's shown in</p> <p>7 Exhibit 84?</p> <p>8 A I can't say.</p> <p>9 Q Why not?</p> <p>10 A Because this is not the contours that I</p> <p>11 have -- I don't know about the adjacent property. I</p> <p>12 know what the city of Poway has provided topography maps</p> <p>13 as to what Dr. Moritz's stream looks like. I'm</p> <p>14 concerned with this order, with Dr. Moritz's stream</p> <p>15 segment. I'm not familiar with the other site, so I</p> <p>16 can't say.</p> <p>17 Q From the standpoint of storm water</p> <p>18 management, are you critical of what you see in</p> <p>19 Exhibits 84 and 82?</p> <p>20 A There's a lot of disturbed soil there, and so</p> <p>21 there is a potential for sediment potentially to -- if</p> <p>22 that in fact is an ephemeral stream I'm looking at in</p> <p>23 84, yeah, there's -- I would love to see it vegetated.</p> <p>24 Q So that it holds the settlement, keeps it</p> <p>25 from getting transported?</p>	<p style="text-align: center;">123</p> <p>1 recall that?</p> <p>2 A Yes.</p> <p>3 Q Does Exhibit 86 show the straw rolls having</p> <p>4 been staked through the center, which was a concern of</p> <p>5 yours as far as them previously -- that's a bad</p> <p>6 question. Your concern was that the straw rolls were</p> <p>7 staked on the sides rather than through the center,</p> <p>8 right?</p> <p>9 A No.</p> <p>10 (Exhibit 86 marked)</p> <p>11 BY MR. SIMPSON:</p> <p>12 Q What concern did you have about the straw</p> <p>13 rolls?</p> <p>14 A When I inspected the site in August and</p> <p>15 inspected the straw rolls, my concern was that the</p> <p>16 stakes were not through the straw roll but to the side</p> <p>17 of the straw roll, which, if there was a significant</p> <p>18 rain event, could cause the sediment control BMP to</p> <p>19 fail.</p> <p>20 MS. FOSTER: Can we get clarification about</p> <p>21 what exhibit we're looking at?</p> <p>22 (Discussion off the record)</p> <p>23 BY MR. SIMPSON:</p> <p>24 Q And your answer was that your concern was the</p> <p>25 staking of the straw rolls on the side, and you wanted</p>
<p style="text-align: center;">122</p> <p>1 A Certainly.</p> <p>2 Q I'm going to show you Exhibit 85, which shows</p> <p>3 another view of the culvert beneath Crocker Road. Are</p> <p>4 you critical of what you see there as far as the</p> <p>5 condition of the culvert?</p> <p>6 A I can't say.</p> <p>7 (Exhibit 85 marked)</p> <p>8 BY MR. SIMPSON:</p> <p>9 Q It's okay, then, in your mind to have -- from</p> <p>10 a storm water standpoint, to have a culvert that's more</p> <p>11 than half full of debris?</p> <p>12 A Depends on how it functions during a rain</p> <p>13 event.</p> <p>14 Q You believe that the city of Poway has</p> <p>15 obligated itself in the city of Poway's JURMP to clear</p> <p>16 drains, including the drain that you see depicted in</p> <p>17 Exhibit 85, so that it transmits water freely?</p> <p>18 A Could you repeat the question, please?</p> <p>19 Q Are you aware of whether the city of Poway</p> <p>20 obligated itself in its JURMP to clear drains, including</p> <p>21 the drain shows in Exhibit 85?</p> <p>22 A I'm not aware.</p> <p>23 Q When you were out at the property in August</p> <p>24 of 2008, one of the concerns you raised was the staking</p> <p>25 of straw rolls and the trenching of straw rolls. Do you</p>	<p style="text-align: center;">124</p> <p>1 to have them staked through the center?</p> <p>2 A There was -- when you say staked through the</p> <p>3 side, I think that's not descriptive. The stake was not</p> <p>4 in the straw roll at all. There was no way for it to</p> <p>5 hold it down like it's portrayed here in Exhibit 86.</p> <p>6 Q I'm going to show you Exhibits 87 and 88.</p> <p>7 From a storm water standpoint, what do you see depicted</p> <p>8 in these two exhibits, 87 and 88?</p> <p>9 A I see water running down a road.</p> <p>10 (Exhibits 87 and 88 marked)</p> <p>11 BY MR. SIMPSON:</p> <p>12 Q I'll represent to you both of these photos</p> <p>13 are taken of Crocker Road in the vicinity of the culvert</p> <p>14 beneath Crocker Road. Do you see the storm water</p> <p>15 overtopping the road in Exhibit 87?</p> <p>16 A I can't really tell what I'm seeing in 87.</p> <p>17 Q How about 88? Do you see sediment transport,</p> <p>18 evidence of sediment transport in Exhibit 88?</p> <p>19 A Yes.</p> <p>20 Q Do you know whether that water flows</p> <p>21 ultimately through the neighboring property to the north</p> <p>22 of the Moritz property and then onto the Moritz</p> <p>23 property?</p> <p>24 A I don't know.</p> <p>25 Q All right. I'm going to show you Exhibit 89.</p>

<p style="text-align: center;">125</p> <p>1 Do you see the ephemeral stream in Exhibit 89 on the</p> <p>2 neighboring property in this photograph?</p> <p>3 A I see water flowing. I can't tell you --</p> <p>4 it's too blurry to tell whether that's a stream. I'm</p> <p>5 not sure.</p> <p>6 (Exhibit 89 marked)</p> <p>7 BY MR. SIMPSON:</p> <p>8 Q Can't tell whether that's water there?</p> <p>9 A I see water.</p> <p>10 Q Can you tell --</p> <p>11 A But in the overall context of the picture, I</p> <p>12 can't tell you if the water flowing in that thing is</p> <p>13 flowing through an ephemeral stream.</p> <p>14 Q Can you tell whether sediment is being</p> <p>15 transported onto the Moritz property based on that</p> <p>16 photograph?</p> <p>17 A Yes.</p> <p>18 Q Now, Dr. Moritz contemplated using a pipe to</p> <p>19 contain the water, such as the water shown in</p> <p>20 Exhibit 89, right?</p> <p>21 A Yes.</p> <p>22 Q Do you believe that had he pursued the</p> <p>23 appropriate permits, he could have had success in</p> <p>24 getting approval for that pipe?</p> <p>25 A I don't know.</p>	<p style="text-align: center;">127</p> <p>1 ambiguous.</p> <p>2 BY MR. SIMPSON:</p> <p>3 Q Do you believe that the discharge can be</p> <p>4 cleaned up?</p> <p>5 A Yes.</p> <p>6 Q Is that if the stream restoration plan, for</p> <p>7 example, is implemented?</p> <p>8 A Yes.</p> <p>9 Q How about the need for taking immediate</p> <p>10 action? Do you believe that the site right now has been</p> <p>11 stabilized sufficient to protect water quality and</p> <p>12 downstream property from immediate threats from winter</p> <p>13 storms?</p> <p>14 A I don't know.</p> <p>15 Q What would you need to know in order to</p> <p>16 answer that?</p> <p>17 A I would need to know the intensity of</p> <p>18 potential storms that may occur in the future.</p> <p>19 Q Have you talked to Danis Bechter about the</p> <p>20 measuring that he implemented for the city of Poway?</p> <p>21 A Yes.</p> <p>22 Q What has he said about their capability of</p> <p>23 handling storm events?</p> <p>24 A Up to this point, they seem to be working.</p> <p>25 Q How are the storm events that we've had since</p>
<p style="text-align: center;">126</p> <p>1 Q What steps do you believe he would have</p> <p>2 needed to go through in order to get to that point where</p> <p>3 he would have had approval?</p> <p>4 A He would have needed to go through either</p> <p>5 obtaining a 401 water quality certification, performing</p> <p>6 CEQA, getting grading permits, stream bed alteration</p> <p>7 agreements, and potentially a 404 permit from the Army</p> <p>8 Corps of Engineers.</p> <p>9 Q Do you believe that CEQA was required in this</p> <p>10 circumstance?</p> <p>11 A Yes.</p> <p>12 Q Why?</p> <p>13 A Because I believe the project as Dr. Moritz</p> <p>14 completed it constitutes a project under CEQA as defined</p> <p>15 by CEQA.</p> <p>16 Q Do you believe that he would not have</p> <p>17 qualified for any exemptions?</p> <p>18 A I do not. Let me state I do not believe he</p> <p>19 would have qualified for a categorical exemption under</p> <p>20 CEQA.</p> <p>21 Q Getting back to exhibit -- I believe it's 73,</p> <p>22 do you believe the bullet point whether the discharge</p> <p>23 can be cleaned up has been addressed by the regional</p> <p>24 board, fourth to the bottom?</p> <p>25 MR. LEON: The question is vague and</p>	<p style="text-align: center;">128</p> <p>1 they've been implemented as compared to your larger</p> <p>2 storm events?</p> <p>3 A I haven't seen the rainfall data, so I can't</p> <p>4 make a judgment on that.</p> <p>5 Q Do you believe that the -- or do you have any</p> <p>6 information one way or another about whether these, for</p> <p>7 example, would meet the 100-year, 24-hour storm event</p> <p>8 criteria?</p> <p>9 A I don't know.</p> <p>10 Q Do you believe that Dr. Moritz or Lori Moritz</p> <p>11 obtained any economic benefit because of the</p> <p>12 noncompliance that you believe has occurred?</p> <p>13 A Yes.</p> <p>14 Q What economic benefit do you believe that</p> <p>15 they've realized?</p> <p>16 A I believe they realized benefit by not</p> <p>17 obtaining the appropriate permits, by not going through</p> <p>18 the CEQA process, by not hiring a civil engineer to</p> <p>19 properly think the project through and implement it</p> <p>20 appropriately.</p> <p>21 Q Before this case have you ever had any</p> <p>22 working relationship with Danis Bechter?</p> <p>23 A No.</p> <p>24 Q How about with David Rizzuto of the city of</p> <p>25 Poway?</p>

<p style="text-align: center;">129</p> <p>1 A No.</p> <p>2 Q How about Donald Sharp of the city of Poway?</p> <p>3 A No.</p> <p>4 Q How about Sam Tadros of the city of Poway,</p> <p>5 now at the county?</p> <p>6 A No.</p> <p>7 Q How about Jim Lyon?</p> <p>8 A No.</p> <p>9 Q How about socially? Did you ever have any</p> <p>10 involvement with any of those guys socially?</p> <p>11 A No.</p> <p>12 Could I request a quick break.</p> <p>13 MR. SIMPSON: Sure.</p> <p>14 (Off the record)</p> <p>15 MR. SIMPSON: I propose that we have</p> <p>16 Mr. Means sign the transcript under the penalty of</p> <p>17 perjury, waiving the requirement of any notary; that he</p> <p>18 do so within 30 days of presentation of the transcript</p> <p>19 to him; that the original be sent directly to Mr. Means</p> <p>20 here at 9174 Sky Park Court --</p> <p>21 THE WITNESS: Suite 100.</p> <p>22 MR. SIMPSON: -- Suite 100, San Diego.</p> <p>23 92121?</p> <p>24 THE WITNESS: 92123.</p> <p>25 MR. SIMPSON: And then you'll be given a</p>	<p style="text-align: center;">131</p> <p>1 DECLARATION UNDER PENALTY OF PERJURY</p> <p>2</p> <p>3 I, CHRISTOPHER MEANS, do hereby certify under</p> <p>4 penalty of perjury that I have read the foregoing</p> <p>5 transcript of my deposition taken January 16, 2009; that</p> <p>6 I have made such corrections as appear noted herein, in</p> <p>7 ink, initialed by me; that my testimony as contained</p> <p>8 herein, as corrected, is true and correct.</p> <p>9 DATED this _____ day of _____,</p> <p>10 20____, at _____, California.</p> <p>11</p> <p>12</p> <p>13 _____</p> <p>14 CHRISTOPHER MEANS</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: center;">130</p> <p>1 piece of paper that you can write down any page and line</p> <p>2 number where you have a change to an answer, and</p> <p>3 indicate what the change is.</p> <p>4 And then I'd like to have a self-addressed</p> <p>5 stamp envelope in there to me. I'll maintain custody of</p> <p>6 the original, make it available to counsel on request.</p> <p>7 And we talked off the record, Counsel Jorge Leon and I,</p> <p>8 about having a rough transcript prepared as soon as</p> <p>9 practicable without killing off the court reporter.</p> <p>10 That will become part of the record, with the</p> <p>11 understanding that it will be supplemented with the</p> <p>12 certified copy when we receive a certified copy. Okay?</p> <p>13 MR. LEON: Okay. What that does is allows</p> <p>14 Doug to go ahead and submit his response to our</p> <p>15 submittal, which is based on the deadline issued by the</p> <p>16 notice of hearing using the draft of the transcript.</p> <p>17 That information will be subject to being updated and</p> <p>18 corrected, if necessary, based on the final version of</p> <p>19 the transcript that will be put out after his deadline.</p> <p>20 THE WITNESS: Okay.</p> <p>21 MR. SIMPSON: Okay?</p> <p>22 MR. LEON: Sounds good.</p> <p>23 MR. SIMPSON: All right. Thank you. You've</p> <p>24 been very patient.</p> <p>25 (The deposition concluded at 2:42 p.m.)</p>	<p style="text-align: center;">132</p> <p>1 REPORTER'S CERTIFICATION</p> <p>2</p> <p>3 I, Tamara L. Espino, Certified Shorthand</p> <p>4 Reporter, in and for the State of California, do hereby</p> <p>5 certify:</p> <p>6</p> <p>7 That the witness named in the foregoing</p> <p>8 deposition was, before the commencement of the</p> <p>9 deposition, duly administered an oath in accordance with</p> <p>10 Code of Civil Procedure Section 2094; that the testimony</p> <p>11 and proceedings were reported stenographically by me and</p> <p>12 later transcribed into computer-aided transcription</p> <p>13 under my direction; that the foregoing is a true record</p> <p>14 of the testimony and proceedings taken at that time.</p> <p>15</p> <p>16 IN WITNESS WHEREOF, I have subscribed my name</p> <p>17 this 21st day of January, 2009.</p> <p>18</p> <p>19</p> <p>20</p> <p>21 _____</p> <p>22 Tamara L. Espino, CSR No. 9494</p> <p>23</p> <p>24</p> <p>25</p>

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1 DEPOSITION ERRATA SHEET
 2
 3 RE: Paulson Reporting & Litigation Services
 4 File No. 22816
 5 Case Caption: CITY OF POWAY
 6 vs. BILL MORITZ, et al.
 7 Deponent: CHRISTOPHER MEANS
 8 Deposition Date: JANUARY 16, 2009
 9 To the Reporter:
 10 I have read the entire transcript of my Deposition taken
 11 in the captioned matter or the same has been read to me.
 12 I request that the following changes be entered upon the
 13 record for the reasons indicated. I have signed my name to
 14 the Errata Sheet and the appropriate Certificate and
 15 authorize you to attach both to the original transcript.
 16
 17 Page No. _____ Line No. _____ Change to: _____
 18 _____
 19 Reason for change: _____
 20 Page No. _____ Line No. _____ Change to: _____
 21 _____
 22 Reason for change: _____
 23 Page No. _____ Line No. _____ Change to: _____
 24 _____
 25 Reason for change: _____

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1 Deposition of CHRISTOPHER MEANS
 2
 3 Page No. _____ Line No. _____ Change to: _____
 4 _____
 5 Reason for change: _____
 6 Page No. _____ Line No. _____ Change to: _____
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 20 Reason for change: _____
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 22 SIGNATURE: _____ DATE: _____
 23 CHRISTOPHER MEANS
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 25